

## **ATTACHMENT 2**

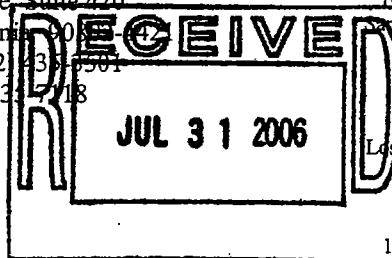
Additional Public Comments -  
Written Correspondence

# LEGAL AID FOUNDATION OF LOS ANGELES

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July 28, 2006

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Los Angeles, CA 90012

**Re: Comments Re: Proposed Marina Del Rey Affordable Housing Policy**

Dear Honorable Supervisors:

The Legal Aid Foundation of Los Angeles (LAFLA) submits this letter on behalf of its client, People Organized for Westside Renewal (POWER) and its colleague, the Western Center on Law & Poverty (WCLP), regarding the County's June 22, 2006 proposed Marina Affordable Housing Policy.

On April 3, 2006, we submitted a letter outlining the various legal problems with the County's existing Marina Affordable Housing Policy. As noted in that letter, LAFLA, WCLP and POWER are intimately familiar with the Mello Act (Gov't Code § 65590). In 1993, WCLP and the Legal Aid Foundation of Long Beach (now part of LAFLA) filed a lawsuit against the City of Los Angeles, alleging that the City failed to comply with its affordable housing obligations under the Mello Act. (Venice Town Council, et al. v. City of Los Angeles, L.A. Super. Ct. No BC089678.) That suit resulted in a published opinion in our favor (47 Cal.App.4<sup>th</sup> 1547). The City of Los Angeles ultimately entered into a Settlement Agreement with LAFLA and WCLP in 2001 and adopted Interim Administrative Procedures for complying with the Mello Act, which currently govern the City's Mello Act compliance process.

Although the County's proposed Marina Affordable Housing Policy addresses some of the issues we raised in our April 3, 2006 letter, many issues remain unresolved and new issues have presented themselves. This letter sets forth our concerns with the proposed new Policy.

## **Replacement Housing**

1. **Exemptions from Replacement Housing.** The Mello Act requires the replacement of low and moderate-income units converted or demolished in the coastal zone. The Mello Act does not provide exceptions from this requirement. Accordingly, the proposed Policy improperly exempts the following categories from the Mello Act's replacement housing obligations:

- (a) resident managers;
- (b) sub-lessees;
- (c) students whose parents claim them as dependents, or whose parents guarantee the rent, even if the students are paying the rent themselves; and
- (d) units that are vacant as early on in the process as commencement of term sheet negotiations.

2. **Method of Determining Household Income.** The Mello Act provides, "[i]n the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply *if at least one such person or family*, excluding dependents thereof, is of low or moderate income." Cal. Gov't Code Sec. 65590(b) (emphasis added).

Pursuant to the Mello Act, the County must obtain current tenant income information to determine the number of replacement units required. However, the proposed Policy improperly allows the County to compare the actual monthly rent with an affordable monthly rental rate if a tenant fails to provide income information. This is not permissible under the Mello Act, as the Mello Act requires examination of tenant incomes, not rental rates. Moreover, it appears that the proposed Policy makes conclusions regarding the incomes of tenants living in units based upon monthly rental rates without giving consideration to the number of tenants living in a unit. This is problematic, as tenants may be "doubled-up" or overcrowded in a unit to afford the monthly rental rate. According to the County's Housing Element, the County had the second highest percentage of low income renters living in overcrowded or doubled-up housing conditions in 1995 (35%). This number has likely increased over the last 11 years. Looking only at monthly rental rates, therefore, without considering the number of tenants in a unit, does not provide sufficient information.

3. **Roommate Independence.** The proposed Policy requires roommates to be unrelated and financially independent of each other in order for their incomes to be assessed separately. This requirement is overly broad. For example, siblings who are financially independent of each other would be treated as a family unit under the Policy. The Policy is also overly broad in that it does not allow roommates to share a bank account or own real property together. Roommates may be financially independent, yet own property or share a bank account related to that property.

4. **Replacement Bedrooms.** Under the proposed Policy, a developer is allowed to replace low and moderate income *bedrooms*, on a one-for-one basis, as opposed to replacing low and moderate income *units* on a one-for-one basis. This contravenes the Mello Act, which provides: “[t]he conversion or demolition of existing residential *dwelling units* occupied by persons and families of low or moderate income . . . shall not be authorized unless provision has been made for the replacement of *those dwelling units*. . . . In the event that an existing residential *dwelling unit* is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding dependents thereof, is of low or moderate income.” Gov’t Code Sec. 65590(b) (emphasis added). Accordingly, under the Mello Act, if one roommate is of low or moderate-income, the entire unit, including all bedrooms, should be replaced. (Similarly, developers should not be allowed to replace two 1-bedroom units with one 2-bedroom unit. It is unclear whether the proposed Policy would allow for this.)

5. **Duration of Affordability.** The proposed Policy requires affordable replacement units to be affordable for at least 30 years. Because the County renegotiates its ground leases during a relatively short time period, most affordable units in the Marina are therefore likely to disappear at the same time. The loss of such a great number of affordable units is likely to violate the County’s Housing Element and its Regional Housing Needs Assessment (RHNA) requirements. Accordingly, we recommend that the County require affordable units to be maintained as affordable for the term of its ground leases.

6. **Like-for-Like Replacement.** The proposed Policy allows a developer to replace all existing affordable units (very low, low and moderate income units) with moderate income units. This is not supported by the Mello Act, which requires that replacement units be targeted to the same income level as the units lost to demolition or conversion. The Mello Act provides, “[t]he conversion or demolition of existing residential units occupied by persons and families of low or moderate income . . . shall not be authorized unless provision has been made for replacement of *those dwelling units* with units for persons and families of *low or moderate income*.” Cal. Gov’t Code Sec. 65590(b) (emphasis added). Accordingly, replacement units should be targeted to the income level of the tenants who resided in the units that were lost.

7. **Location.** The location requirement under the proposed Policy allows developers to provide replacement units either on-site or elsewhere within the coastal zone. It would be preferable for the County to require that replacement units be located on-site unless it is infeasible to do so.

It has come to our attention that some Marina developers have proposed to designate one or more sites in the Marina as locations for all affordable units that are required pursuant to the Mello Act. This proposal would violate the Mello Act. It also raises fair housing concerns, as this proposal would ghettoize and stigmatize the affordable units.

8. **Rehabilitation.** The proposed Policy allows off-site units to be either new construction or rehabilitation of existing units. The Mello Act, however, does not allow for rehabilitation of existing units, as rehabilitation does not create net, new units. The County, accordingly, may not allow for rehabilitation of units in its Policy. Rehabilitation, moreover, is not sound policy, as

rehabilitation is cheaper than new construction, thereby providing developers with an incentive to build off-site. According to the County's Housing Element, new construction may cost up to as much as eight times more than rehabilitation.

### **Inclusionary Housing**

9. **Feasibility Standard.** The Mello Act states, "[n]ew housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income." Cal Gov't Code Sec. 65590(d). This means that if it is feasible to provide housing for persons and families of low or moderate income at a new housing development in the coastal zone, such housing must be provided. In applying the Mello Act's inclusionary requirement the County must make a determination as to the number of affordable units that may feasibly be provided at such a project and then require that the project provide that number of affordable units.

Based on discussions with County Counsel, it appears that the County has adopted the position that "any feasible amount" of housing will satisfy the Mello Act's inclusionary obligation. Under this interpretation, if a 100 unit project could feasibly include 10 units of affordable housing, the County could require the developer to provide only 1 unit of affordable housing, because any number between 0 and 10 would be "feasible." This interpretation simply does not square with a plain reading of the statute, which again requires that if it is feasible to provide housing for persons and families of low or moderate income at a new housing development in the coastal zone, such units must be provided.

In addition to meeting Mello Act requirements, the County is also obligated to satisfy its obligations under the Housing Element of its General Plan. The County's Housing Element Goal 1 is to promote "(a) wide range of housing types in sufficient quantity to meet the needs of current and future residents, particularly persons and households with special needs, including but not limited to lower-income households, senior citizens, and the homeless." Goal 2 in the Housing Element is to promote "(a) housing supply that ranges broadly enough in price and rent to enable all households regardless of income, to secure adequate housing." The County is well behind in meeting these obligations. If the County appropriately requires Marina developers to comply with the Mello Act's inclusionary housing obligations, it will greatly assist the County in satisfying its Housing Element obligations to produce affordable housing.

10. **Method of Calculating Inclusionary Obligation.** Under the proposed Policy, the inclusionary housing unit calculation is based upon the net increase in the size of the new development. This method of calculation is not supported by the Mello Act. The Mello Act anticipates that developers will provide affordable inclusionary units based upon total development size. The Mello Act provides, "[n]ew housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income." Gov't Code Sec. 65590(d). The Mello Act does not support subtracting the number of existing units from the number of new units to calculate a developer's inclusionary obligation. Under the proposed Policy's method of calculating inclusionary units, developers

could circumvent their entire inclusionary housing obligation by simply constructing new developments the same size as existing developments.

11. **Reduced Inclusionary Requirement.** We know from our experience in the City of Los Angeles and the project developments we have worked on in the County that 10% on-site inclusionary units at very low-income is generally feasible, where very low-income is defined as 50% of area median income. The County's current Policy requires 10% inclusionary units at low-income, where low is defined as 60% of area median income. The County's proposed Policy is a huge step backward in terms of providing affordable inclusionary units, as it retreats from 10% at low defined as 60% of area median income, to 5% at very-low defined as 50% of area median income. The County, therefore, has cut in half the number of inclusionary units that must be provided and has lowered the income targeting by only 10%. Notably, the County has provided absolutely no reasoning or analysis whatsoever to explain its decision to cut in half Mello inclusionary obligations. When this reduced inclusionary requirement of only 5% is coupled with County's proposal to deduct the number of existing units from the number of newly created units, developer obligations to provide affordable housing in the coastal zone are entirely insufficient.

12. **Density Bonus Impact.** The proposed Policy allows a developer to calculate its inclusionary obligation based upon the pre-density bonus number of units in a development. This is impermissible under the Mello Act. If the County requires developers to include a percent of new units as inclusionary Mello units, density bonus units cannot be deducted from total development size before calculating the number of Mello inclusionary units. Mello units, accordingly, should be calculated based upon the post-density bonus size of a development.

13. **Artificial Regulation of Inclusionary Obligation.** The County's reductions in Mello inclusionary requirements, as discussed in numbers 9-12 above, simply act as an artificial regulation of the number of affordable units that a developer could feasibly provide under the Mello Act's inclusionary obligation. Pursuant to the County's artificial regulation of inclusionary units, a hypothetical 100 unit project, which could feasibly provide 10 units of affordable housing under the County's current Policy, will only have to provide 2.5 units under the proposed Policy (given a 5% inclusionary requirement, a 25% density bonus reduction and a 25% reduction based on 25 pre-existing units). An application of the County's proposed Policy, accordingly, is likely to yield projects that satisfy neither the Mello Act nor the County's RHNA allocation.

14. **Rehabilitation.** As with the replacement units, the proposed Policy allows developers to provide inclusionary units off-site through new construction or rehabilitation. As noted in the replacement discussion above, rehabilitation does not create net, new units, so it is impermissible under the Mello Act. Rehabilitation, moreover, is cheaper than new construction, so it gives developers an incentive to build affordable units off-site.

15. **Duration of Affordability.** The proposed Policy requires that affordable inclusionary units remain affordable for only 30 years. For the reasons stated above in the replacement discussion, affordable units should remain affordable for the duration of ground leases.

## Feasibility Analysis for Replacement and Inclusionary Housing Units

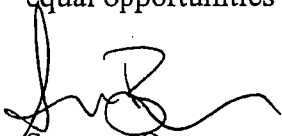
16. **Methodology, Threshold and Cap Rate.** The proposed Policy fails to provide adequate factors to determine feasibility. First, although reference is made to an estimate of the developer's return, the proposed Policy does not specify what methodology should be used to measure the return. Second, the proposed Policy fails to set forth a threshold level for the return along with a rationale explaining why this is the minimum level demanded in the market. Finally, although the proposed Policy allows for an adjustment of up to 200 basis points from the capitalization rate for apartment sales, the proposal provides no grounds for selecting any particular number between 0 and 200.

17. **Rent Adjustments.** Under the proposed Policy, rent adjustments for inclusionary units are subject to negotiation on a case-by-case basis with the County. The Policy, however, provides no details regarding such adjustments. The County should set forth its rent adjustment policy with sufficient detail in its proposed Policy.

### Additional Provision

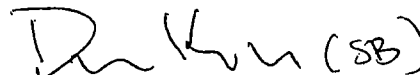
18. **Rental vs. Ownership Units.** The proposed Policy allows developers to satisfy their replacement and inclusionary Mello obligations by providing rental units, irrespective of whether the new development is comprised of rental units, ownership units or a mix of both types of units. This is problematic for a variety of reasons. First, it is cheaper for developers to build and subsidize rental units than ownership units. This creates an incentive for developers to build affordable rentals. If developers opt to build affordable rentals in a building with ownership units, developers should be required to provide additional affordable units as a result of the reduced cost.

Second, if affordable rentals are provided in a building with ownership units, the affordable units and the tenants residing in them are likely to be stigmatized. Third, the purpose of the Mello Act is to prevent gentrification of the coastal zone. It violates both the intent and spirit of the Mello Act for developers to provide cheaper and inferior units for low and moderate income households. Finally, low and moderate income households should be provided with equal opportunities to obtain ownership units in the coastal zone.



Susanne Browne  
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Legal Aid Foundation of Los Angeles

Sincerely,



Deanna R. Kitamura  
Attorney at Law  
Western Center on Law & Poverty

cc: Richard Weiss    Nicole Englund  
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April 3, 2006

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**Re: Legality of Marina Del Rey Affordable Housing Policy**

Dear Honorable Supervisors, Commissioners and County Counsel:

The Legal Aid Foundation of Los Angeles (LAFLA) and Western Center on Law & Poverty (WCLP) submit this letter on behalf of People Organized for Westside Renewal (POWER) regarding the County's Marina del Rey Affordable Housing Policy and Policy Analysis (the "Policy"). On its face and as applied, the Policy violates the Mello Act's replacement and inclusionary housing provisions set out in Government Code §65590. In addition, the County's practice of segregating set-aside affordable units by age violates both the Mello Act and state and federal housing law. We have shared these concerns with County counsel and County staff and have been informed that the County plans to form a Mello policy task force and revise the Policy in the next six to twelve months. However, we are concerned that the County will approve developments and renegotiate ground leases in the interim prior to any change in the current illegal Policy and practices. Accordingly, we write to urge the County to cease any such project approvals and ground lease negotiations until its Policy is brought into compliance with the law.



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LAFLA, WCLP and POWER are intimately familiar with the Mello Act (Gov't Code § 65590). In 1993, WCLP and the Legal Aid Foundation of Long Beach (now part of LAFLA) filed a lawsuit against the City of Los Angeles, alleging that the City failed to comply with its affordable housing obligations under the Mello Act. (Venice Town Council, et al. v. City of Los Angeles, L.A. Super. Ct. No BC089678.) That suit resulted in a published opinion in our favor (47 Cal.App.4<sup>th</sup> 1547). The City of Los Angeles ultimately entered into a Settlement Agreement with LAFLA and WCLP in 2001 and adopted Interim Administrative Procedures for complying with the Mello Act, which currently govern the City's Mello Act compliance process.

In the last two years, LAFLA, WCLP and POWER have been actively involved in Mello Act cases in which developers have appealed the requirement to provide affordable units. In each instance, the outcome has been either on-site or off-site provision of affordable units. One case in particular involved a proposed 298 unit development in the Marina del Rey submarket. In that case, the developer (Trammell Crow Residential) agreed to include 24 on-site very low-income apartment units or 27 on-site very low-income condominium units, despite the fact that the developer had the additional expense of creating a \$5 million access road and did not take advantage of a density bonus or other incentives.

**I. The County Policy Fails to Meet Mello Act Requirements Regarding the Replacement of Affordable Units that are Converted or Demolished in the Coastal Zone.**

The Mello Act prohibits the authorization of conversion or demolition of existing residential units "occupied by persons and families of low or moderate income" unless provision has been made for the replacement of those dwelling units." Gov't Code 65590(b). The Mello Act provides, "[r]eplacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit." *Id.* Moreover, replacement units must be net, new units. See Venice Town Council, 47 Cal. App. 4th at 1553.

The County's Policy violates the Mello Act's replacement housing obligations in a number of ways. First, on its face, the Policy contains no provisions to ensure that these replacement obligations are followed. In order to satisfy state law, the County's must ensure that the developers build replacement units in compliance with the Mello Act.

Second, the recent case of Del Rey Shores illustrates that the County's practice does not include a determination as to whether persons and families of low or moderate income reside in existing developments. The Regional Planning staff report regarding the project contains no discussion of the household income of current project residents. County planning staff testified at a January 25, 2006 Regional Planning Commission hearing regarding the project that the County had examined rent levels, but not tenant incomes at the project. Accordingly, it appears the County does not require developers or staff to examine existing tenant incomes when a developer proposes conversion or demolition of residential units. As a result, the County cannot meet its obligation under the Mello Act to require replacement units when units occupied by low or moderate income persons or families are proposed for demolition or conversion.

To comply with the Mello Act, the County should not approve demolition or conversion of any units currently located in the Marina without first determining whether any of these households are of low or moderate-income. If the County finds that units proposed for demolition or conversion are occupied by families of low or moderate income, the County should require developers to submit a plan for properly replacing those units before issuing any project approvals.

**II. The County Policy Violates the Mello Act by Allowing Developers to Pay In-lieu Fees for Inclusionary Units When It Is Feasible to Provide Affordable Units On or Off-site.**

The Mello Act provides: "New housing developments constructed within the coastal zone *shall*, where feasible, provide housing units for persons and families of low or moderate income . . . ." Gov't Code Sec. 65590(d) (emphasis added). Thus, if it is feasible for a developer to provide any inclusionary units, the developer must do so.

This provision of the statute does not have an exception permitting developers to pay a fee in-lieu of providing the affordable units. When the Legislature wanted to create an in-lieu exception, it knew how to do so.

The Mello Act specifically contemplates in-lieu fees for replacement units. Gov't Code § 65590(b) and (b)(4). However, the Mello Act contains no provision regarding in-lieu fees for inclusionary units. Accordingly, in-lieu fees may not be paid for inclusionary units under the Mello Act unless it is infeasible for a developer to provide any affordable units, either on or off-site.

The County Policy, by contrast, allows developers to pay in-lieu fees for inclusionary units when provision of some affordable units on or off-site is feasible.

In the event that on-site affordable units are infeasible, the Mello Act provides that "the local government *shall* require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof." The County's Policy fails to require an analysis of whether off-site provision is feasible and instead simply allows a developer to request an in-lieu fee. The County's Policy is additionally troublesome because the Policy does not require the County to spend the in-lieu fees within the coastal zone or within three miles of the coastal zone. The Policy allows the County to spend the Mello Act fees far outside the coastal zone in unincorporated areas of the County.

Thus, the County Policy violates the Mello Act by allowing in-lieu fees for inclusionary units where it is feasible for a developer to provide affordable units on or off-site and by failing to require an analysis of whether off-site provision of units is feasible when on-site provision is infeasible.

### **III. The County's In-lieu Fees Are Set At A Rate That Does Not Meet the Mello Act's Requirement to Create Net, New Units.**

#### **A. In-Lieu Fee for Replacement Units.**

As noted above, the Mello Act allows for in-lieu fees for replacement units. Assuming the County's currently existing in-lieu fee for inclusionary units also applies to replacement units, the County's fee is set far too low to comply with the Mello Act's requirement that the in-lieu fee "will result in the replacement of the number of dwelling units which would otherwise have been required . . . ." Gov't Code § 65590(b)(4).

The County's fee schedule is set far too low because the County has: (1) improperly based the fee on a per unit "gap"; (2) improperly estimated land costs outside of the coastal zone; and (3) adopted an inadequate index for annual adjustments

The County erred in calculating the benefits of its proposed in-lieu fee in combination with other funding sources. In-lieu fees in and of themselves should be sufficient to create an entire affordable unit as opposed to filling "the gap" not covered by other funding sources. A study commissioned by the City of Los Angeles regarding the Mello Act estimated that the total in-lieu fee subsidy required for a low-income unit in the coastal area at about \$215,000.<sup>1</sup> The County's Policy indicates that it reduced its in-lieu fee by assuming the existence of additional funding sources available for off-site developments. However, this assumption is flawed for two reasons. First, the Mello Act requires that replacement units be located on-site or within the coastal zone if feasible or, if this is not feasible, then within three miles of the coastal zone. Because the County does not have a program to build affordable units within the geographic area set out in

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<sup>1</sup> This figure is too low because the data on which it is based is outdated. Development and land costs have risen dramatically in the last few years.

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the Mello Act, the County cannot assume in-lieu fees will be used appropriately for replacement units. Second, the County's Policy states that state tax-exempt bond funding and state and federal tax credits are finite and that both programs are allocated on a competitive basis. Therefore, if the County or a non-profit developer obtains tax-exempt bond funding or tax credits, another affordable housing project that applied will not receive funding. The County's Policy of merely filling the gap thus leads to a reduction in the amount of affordable housing created.

As noted above, the Mello Act requires that replacement units be located on-site or elsewhere within the coastal zone if feasible. If not feasible, replacement units can be located within three miles of the coastal zone. The County's Policy regarding the in-lieu fee, however, ignores the Mello Act's preference that the replacement unit be located on-site or elsewhere within the coastal zone. Instead, the County adopted a 20% downward adjustment of land cost with the assumption that off-site units will be built within three miles of the coastal zone. This downward adjustment is not supported by the background information provided in Exhibit 2 of the County's Policy and violates the Mello Act's replacement provisions. Moreover, the County cannot assume any affordable units will be built within three miles of the coastal zone without verifying that land is available within that radius.

According to the County's Policy, the County calculated the fee for year 2002 and must adjust the fee in accordance with the Consumer Price Index (CPI) for this area. The CPI is an inadequate index with regard to construction and land costs. The County's consultant estimated a \$48 per square foot cost for 2002. However, we know from the City's consultant that total development cost for 2005 was more than twice the CPI increase. By linking the in-lieu fee to an inadequate index, the County further deflates an already inadequate fee.

#### **B. In-Lieu Fee Where No Inclusionary Units Are Feasible.**

As noted above, an in-lieu fee is not allowed unless a developer shows that it is infeasible to include even one affordable unit on or off-site. In the case that a developer shows that no affordable units are feasible on or off-site, the developer should pay an in-lieu fee comparable to the fraction of the unit that is feasible. For the reasons set out above, however, the County's existing in-lieu fee schedule is too low.

#### **IV. The County's Policy Relies on Flawed Methodology to Reach Erroneous Conclusions about the Feasibility of Mello Act Compliance.**

After careful review of the County's Policy, it is evident that the Policy should be revised using alternative methodologies and thresholds.

#### **A. Measuring Returns and Choosing Thresholds**

The County Policy measures feasibility of apartment projects using net operating income divided by total development cost (NOI/TDC). This measure provides only a partial picture of the developer's return—a picture of the current operating return. In fact, investors also rely in part on returns to be gained by the increasing value of their projects above the cost of developing them—value received whether at actual sale or as an asset onto which they hold. The conventional way of assessing return on an apartment development is to undertake a two step analysis:

- to value the structure as if it were being sold, based on its current income and the capitalization rate that reflects the market's assessment of the value of the income stream it will produce over time, or  
Value= NOI/Cap Rate
- to assess profitability in terms of that Value relative to the costs of development

The best mechanism for undertaking the second step is to evaluate Internal Rate of Return (IRR), in order to measure the return on what the developer actually invests (equity) as distinct from the construction loan. This is the methodology that was used by the Los Angeles Housing Department in its evaluation of Mello Act compliance at the Trammell Crow Residential development in the Marina del Rey submarket.

For any measure, the threshold level employed is key. The County's threshold level is far too high for the measure it uses, producing much higher return thresholds than we know developers are seeking. The County uses a 10% to 10.5+% threshold level for its NOI/TDC measure. Applying a reasonable capitalization rate of 0.07<sup>2</sup> and some algebra, the County's threshold level of 10% equals an Internal Rate of Return between 32% and 66% depending on whether it takes two or four years from investment to sale or valuation.<sup>3</sup> This is nearly two to nearly four times as high as the 18% level that is in the middle of the consensus range of 15% - 20% for the threshold for that measure.

#### **B. County Leasing Rates**

The County's Policy requires the County to consider a reduction in County rent of less than 53% where affordable units are proposed. The Policy states that the County would be making an economically indefensible decision if it were to allow a reduction of 53% or more. However, nothing scientific leads to this presumption. In fact, according to Exhibit 2 of the Policy, the County has accepted lower lease rates in the past. And we know from our experience

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<sup>2</sup> Capitalization rates in West Los Angeles, according to HR&A appendices and other sources, currently range from under 0.05 to 0.064.

<sup>3</sup> This assumes (1) two to four years from investment to sale or valuation and (2) construction financing for 70% of total development cost

April 3, 2006

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with the Del Rey Shores project that fairly small changes in the low-end leasing rate can make a project with on-site affordable units feasible. Because of the important goal of creating affordable units, the County should accept lease rates below 53% as it has done so for other projects.

### **C. Density Bonus**

The County's Policy properly identifies the state's density bonus law as a means to mitigate the cost of providing affordable units on-site. In the past two years, the state's density bonus law has been amended so that developers can more easily receive a density bonus. As the law now reads, developers are entitled to a density bonus when they reserve as little as 5% very low-income units in their projects. Gov't Code §65915. Although the County's Policy acknowledges the mitigating nature of a density bonus, it summarily concludes that construction costs would likely counter any benefit of adding the density bonus units. In essence, the County incorrectly presumes, in all cases, that a developer cannot take advantage of a density bonus. This presumption is improper, as developers must provide engineering reports to support such an allegation.

### **V. The County's Pattern and Practice of Discrimination Violate the Mello Act and Federal and State Law.**

The County's Policy expressly acknowledges that the intent of the Mello Act is to provide housing for all types of households and explains that the Policy's requirement of a broad unit mix is to effectuate the Mello Act's intent and to provide housing for a broad range of households types: "...one, two and three bedroom units will be made available as low-income housing, extending the benefits of affordable housing to families as well as to individuals and the senior segment of the population." (Policy, fn. 3, p. 5). However, based on our experience with the Capri project, we believe that the County has had an unwritten policy requiring that all affordable units in the Marina be restricted for seniors only. Such a practice violates the Mello Act, which requires that new housing developments in the coastal zone provide "housing units for persons *and families* of low or moderate income." (Gov't Code. § 65590) (emphasis added). Senior-only affordable housing does not satisfy this requirement.

Federal and State law prohibit discrimination based on age and familial status in buildings that do not meet the legal standards for senior housing. Title 24 CFR Sec. 100.305 and Title 24 CFR Sec. 100.303 define senior housing as buildings in which 80% of units in a building are reserved for individuals over age 55 or buildings in which 100% of the units in are reserved for individuals over age 62. Developments which reserve only 10% of units for individuals over age 62 do not qualify as senior housing under the federal standards. Accordingly, the County's practice violates the Mello Act and the laws prohibiting discrimination.

April 3, 2006

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## VI. Conclusion


We appreciate that the County has recently recognized that legitimate issues have been raised regarding the legality of the County's Policy. We also appreciate that the County plans to undertake a review of its Policy. However, because the existing Policy does not comply with the Mello Act, the County should take the additional step of refraining from approving any further developments until such time as the County adopts a policy that is compliant with the Mello Act. Moreover, because ground lease terms affect a developer's ability to include affordable units, all ground lease negotiations should cease as well until such time as the County adopts a Policy that complies with the Mello Act.

Please advise us by April 24, 2006, whether the County will immediately agree to cease all development approvals and ground lease negotiations until it adopts a Policy that complies with the Mello Act. If the County does not agree to this, we will pursue legal remedies to ensure that the County does not continue to violate the law.

Sincerely,



Susanne Browne  
Attorney-at-Law  
Legal Aid Foundation of Los Angeles



Deanna R. Kitamura  
Attorney-at-Law  
Western Center on Law & Poverty

cc: Nicole Englund, Supervisor Gloria Molina's Office  
Rick Velasquez, Supervisor Don Knabe's Office  
Larry Hafetz, Office of the County Counsel  
Thomas Faughnan, Office of the County Counsel

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LATHAM & WATKINS LLP

October 20, 2006

Mr. Santos Kreimann  
Chief Administrative Office  
754 Hall of Administration  
500 W. Temple Street  
Los Angeles, CA 90012

Re: Proposed Mello Act Policy for County of Los Angeles

Dear Mr. Kreimann:

On behalf of Lyon Capital Ventures ("Lyon"), which is currently negotiating a term sheet with the County for the Villa Venetia project, we would like to take this opportunity to supplement our memos of May 25, 2006 and June 20, 2006 (attached) and our testimony at the August 1, 2006 Board of Supervisors hearing and September 7, 2006 Mello Act Policy Task Force workshop. We understand that you are in the process of identifying and evaluating potential revisions to the draft proposed Mello Act policy released by the Task Force earlier this year ("Draft Policy"), and we submit the following comments and observations for your consideration.

*The Marina is a Unique Economic and Coastal Resource, with Unique Challenges for Redevelopment.* The Marina generates substantial revenues for the County that are used for public benefit programs. The Marina is also a public recreational resource protected under the Coastal Act. It includes some of the most expensive and difficult to develop land within the County. Redevelopment is subject to a number of development regulations and constraints, both legal and political, and approvals can take several years to obtain. A Marina development project often involves many months of negotiations related to the term sheet, option, and lease agreements. In addition, multiple lease- and entitlements-related hearings can be required before such bodies as the Small Craft Harbor Commission, Design Control Review Board, Regional Planning Commission, Board of Supervisors and the California Coastal Commission. Even with comprehensive outreach efforts, community opposition is not uncommon. These factors push the limits of feasibility for redeveloping the Marina, even without taking into account affordable housing obligations.

*The City of Los Angeles Has Recognized that Creating New Rental Housing in the Coastal Zone is Categorically Infeasible.* Earlier this week, the City of Los Angeles released a draft ordinance to replace its outdated Interim Administrative Procedures for Implementing the Mello Act. (See attached Draft City Ordinance). The Draft City Ordinance recognizes that



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increasing construction costs and demand for ownership housing has contributed to the categorical infeasibility of creating new rental housing within the coastal zone:

“The consultant found that none of the apartment prototypes—large or small—were financially feasible in the base case. Since even 100 percent market-rate rental projects are infeasible, requiring them to provide affordable units or pay an in-lieu fee would make them even more infeasible than [sic] they already are. Basically, HR&A found that the very strong demand for ownership housing in the Coastal Zone has bid up the price of land beyond what the typical apartment developer can afford to pay. HR&A’s finding is consistent with recent data showing that most multi-family housing construction in the Coastal Zone is for ownership units, and that many developers initially pulling permits for apartments do so intending to sell them as condominiums.” (City of LA Staff Report, Proposed Mello Act Ordinance, October 2006, at 18).

*The County Should Consider Provisions Included in the City’s Proposed Draft City Ordinance, Which Allows In Lieu Fees and Off-Site Compliance “By Right”.* Based on a number of considerations, many of which also have been raised in the County record, the proposed Draft City Ordinance gives developers the option of providing the required units on-site, paying in lieu fees, or providing the required units off-site anywhere in the coastal zone or within three miles. We agree with the City of Los Angeles staff’s observations about these important tools for compliance:

*In lieu fees:* “in-lieu fees are particularly advantageous: they provide a reliable source of local funds that can be matched 3:1 to obtain state and federal affordable housing money.” (City of LA Staff Report, Proposed Mello Act Ordinance, October 2006, at 23).

*Off-site alternatives:* “since it is so difficult to anticipate where future development opportunities may arise, such flexibility is necessary to maximize the number of affordable units that can be provided under the Mello Act Ordinance. On the other hand, given the policy interest in ensuring that such units are not concentrated in one area, the proposed ordinance allows a more restrictive geographic standard to be imposed on a case-by-case basis.” (City of LA Staff Report, Proposed Mello Act Ordinance, October 2006, at 23).

Potential off-site alternatives under the City’s proposed ordinance include new construction, adaptive reuse of non-residential buildings, purchase and rehabilitation of existing residential buildings, and purchase of existing Market-rate residential units.

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The County's 2002 Mello Act policy recognized the challenges associated with development within the coastal zone, and created a program for developers to pay in lieu fees to create affordable housing. As we have noted before, such programs are used successfully in other jurisdictions. We continue to believe that such an alternative achieves the objectives of maximizing Marina revenues and creating certainty for developers, while still complying with the Mello Act. In lieu fees – coupled with a mechanism to ensure that the funding is used to build affordable housing – should be available. Similarly, we believe that off-site alternatives should be available. As indicated in previous correspondence, allowing for-profit developers to work with non-profit developers can result in *more* affordable housing units with on-site amenities that are geared towards residents, like playground equipment and computer rooms. These options, which may soon be available to City residents, should be available within the County as well.

*Social Factors Justify Allowing In Lieu Fees and Off-Site Compliance Options.*

The Mello Act allows the County to consider social factors in determining whether on-site compliance is feasible. Because of their potential to generate significantly more units, Lyon supports alternatives that allow for in lieu fees and off-site compliance.

*1. The County's Current Housing Crisis Requires Looking Beyond the Marina and the Mello Act to Meet Housing Needs.* The County needs to build more housing at all levels of affordability. According to SCAG and County data, nearly 30,000 housing units – including both affordable and market rate – are still needed within unincorporated County areas to meet housing needs generated between January 1998 and June 2005. During that 7½ year time period, just 936 new income-restricted affordable units were constructed, and less than 10% percent of the County's Regional Housing Needs Assessment fair share housing goals for affordable housing were met.

The County must look beyond the limited number of units within the coastal zone to solve the current housing crisis. Requiring all projects in the coastal zone to provide units on-site – where land costs are the highest and density is limited by the need to protect coastal resources – is among the least cost-effective options and will generate few units given the high cost per unit in comparison to other options. The County needs to consider alternatives that will maximize the number of affordable units. This includes off-site alternatives that can accommodate increased density along transportation corridors and job centers, and that can take advantage of lower land costs, reduced environmental constraints, and the ability to leverage private funds with tax credits and other financing incentives to maximize creation of affordable housing.

*2. The County's Mello Policy Should Avoid Creating Windfall Luxuries to Individuals Where the Same Funding Can Be Used to Create Housing for Many Others.* Dollar for dollar, more housing can be created outside of the Marina than can be created within it. Rather than subsidizing a percentage of otherwise costly units within a project in order to make them affordable to a few households, limited dollars are better spent on projects where land costs are lower or where funds can be leveraged with financing incentives, tax credits, and other funding sources. The County's interest in preserving and creating as much decent, affordable

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housing as possible outweighs any interest in providing high-end, luxury units to a fortunate handful of very low or low income households.

*Economic Factors Justify Allowing In Lieu Fees and Off-Site Compliance Options: The Unique Revenue Impacts to the County as Landowner Must be Considered.* The Marina is one of the County's most important assets. Maximizing revenues from this important source of unrestricted funding directly implements Goal 4 of the County's Strategic Plan (as updated in 2005), which is "Fiscal Responsibility: Strengthen the County's Fiscal Capacity." Because rents from the Marina are used to fund important County-wide programs, such as health and other social services that benefit low and moderate-income individuals and families throughout the County, maximizing revenues from the Marina also helps to implement other Strategic Plan goals, such as "Children and Families' Well-Being" (Goal 5), "Community Services" (Goal 6), "Health and Mental Health" (Goal 7), and "Public Safety" (Goal 8).

Reducing ground rents to subsidize on-site affordable units directly impacts this funding. The fiscal impacts of potential rent reductions, lower overall revenue and the County programs to be affected must be evaluated. We understand that the Del Rey Shores project, for example, may receive a rent concession of \$11.05 million to offset Mello Act affordable housing obligations and increases in construction costs as a result of project delays. Concessions such as these by the County can be avoided by allowing off-site compliance and in lieu fee payments.

*"Second Generation" Redevelopment at the Marina has Already Resulted in the Production of New Affordable Housing.* Affordable housing has been built and will continue to exist within the Marina even if developers are allowed to provide units off-site or pay in lieu fees. Recent County and/or Coastal Commission approvals for "Second Generation" residential projects in the Marina have resulted in conditions that will require the production of at least 179 affordable housing units within the Marina. These include the following:

- **10 low-income senior citizen units at the Capri Apartment on Marina Parcel 20 (units occupied).** (Represents 10% set aside for 99-unit apartment project);
- **18 on-site low-income senior citizen units at the Marina Harbors Apartments complex on Marina Parcel 111;** (15% set aside for 120-unit apartment project. The affordable units, though approved in relation to new 120-unit apartment building, were provided within an existing apartment building on the parcel);
- **82 on-site very low-income senior citizen units at the Esprit Apartments at Marina Parcels 12 and 15** (Phase 1 apartments on Parcel 12 now under construction);
- **15 on-site very low-income units (non-age restricted) at the Admiralty Apartments on Marina Parcel 140** (approved but yet to be constructed); and
- **17 very low-income units (non-age restricted) and at least 37 moderate income "replacement" units in The Shores project at Marina Parcels 100 & 101** (Represents a 5% inclusionary set aside based on the net new incremental units).

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As noted above, the City's rationale for exempting apartment projects from Mello Act requirements is that high demand within the Coastal Zone has bid up the price of land beyond what the typical apartment developer can afford to pay. Requiring on-site affordable housing in every instance will only discourage the future production of residential units, which in turn will only worsen the supply shortage and drive rents and prices higher. Compliance flexibility, on the other hand, will encourage the production of affordable housing.

Suggested "Options" for the Board of Supervisors to Consider and Evaluate. Based on the considerations outlined above and in the attached materials, we urge the County to consider a policy that includes the following components:

- *State / County Density Bonus Option.* Any project that qualifies for a density bonus under the state law or County ordinance should be deemed to have satisfied the Mello Act. The current minimum percentage requirements for new housing should be 5% very low and 10% low. In addition, for-sale projects should be allowed to comply by setting aside 10% moderate income units, and "senior citizen housing developments" as defined in the Civil Code should also qualify, consistent with the density bonus laws.
- *In Lieu Fees Option and Creation of Affordable Housing Trust Fund.* The County should reinstate the in lieu fee option and establish an "affordable housing trust fund" to ensure that any fees collected for the purpose of providing affordable housing are used to build affordable housing off-site. A list of eligible projects could be maintained to ensure that any funds are used to build housing.
- *Flexible Off-Site Options.* Like the City's proposed policy, the County should provide developers with the option to provide the required housing off-site, either elsewhere within the coastal zone or within three miles thereof. The proposed off-site alternative should allow rehabilitation of existing units, including existing affordable units where the developer extends the term of affordability, and projects by non-profit builders that need additional funding. Proposed off-site alternatives should be approved at the same time as the market-rate project to streamline the approval process for projects.
- *Exemption for Apartments.* In light of the City of Los Angeles' categorical conclusion that construction of new rental housing is infeasible and because the production of rental housing needs to be encouraged, the County should exempt for-rent units from mandatory Mello requirements.
- *Evaluation of Fiscal Impacts of All Alternatives.* As requested above, the County's environmental analysis of the proposed Draft Policy should include an economic assessment of the fiscal impacts on County programs that would result from rent concessions and lower overall rent revenues associated with requiring on-site affordable housing within the Marina.

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*The Suggested Options are In Keeping with the Purpose of the Mello Act, which was to Restore Local Control Over Housing Policy.* Prior to the Mello Act, the state Coastal Commission imposed affordable housing requirements on projects in the coastal zone. As a result, coastal cities and counties had little to no control over housing policy within a portion of their jurisdiction. The Mello Act was one of about 30 bills introduced to give control over housing policy back to local governments, so that jurisdictions could establish uniform housing policy. Today, the Mello Act still provides the County with a great deal of discretion and flexibility to set housing policy in the County coastal areas that supports such policy on a County-wide basis.

We believe that a policy based on the considerations listed above achieves the optimal balance between maximizing affordable housing production within or near the coastal zone, maximizing the revenues generated from the Marina, and protecting this important coastal resource.

*Clarification of Statements Made at September 7 Workshop*

1. *The County's Draft Policy is Not Proposing to Do Less than the City of Los Angeles' Interim Mello Policy Was Intended to Require.* During the September 7 workshop, representatives and members of POWER urged you to adopt the percentage requirements set forth in the City of Los Angeles' Interim Administrative Procedures for Implementing the Mello Act ("City's Interim Policy"). The City's Interim Policy requires new developments to set aside 10% of new units for very low income households and 20% of new units for low income households. The City's Interim Policy was adopted in 2000 in connection with the settlement of a 1993 lawsuit by Legal Aid Foundation of Los Angeles and the Western Center for Law and Poverty against the City. The Interim Policy was "always intended as a stop-gap measure to give the City the time it needed to develop a permanent Mello Act regulation," and was never intended to survive as long as it has. (City of LA Staff Report, Proposed Mello Act Ordinance, October 2006, at 10).

Importantly, the percentages established in 2000 by the City's Interim Policy reflected the state density bonus law that was effective in 2000 (but has since been amended), which required 20% low income or 10% very low income set-asides in order to qualify for a bonus density under state law. Thus, the City's Interim Policy mirrored the state law percentages in selecting minimum thresholds, thereby allowing the City to apply the same affordable housing density bonus policy both inside and outside the coastal zone. The state law was amended in 2004 to lower the minimum percentage requirements, in recognition of the tremendous increase in housing production costs. The minimum required set-asides were reduced from 20% to 10% for low income units and from 10% to 5% for very low income units. The Interim Policy adopted in 2000 was never amended, because a permanent replacement ordinance was expected soon.

Just as the City's Interim Policy originally tracked state density bonus law, so does the County's proposal to require 5% very low income units. In July 2006, the County adopted an ordinance to implement the state density bonus law, thus the percentage goals proposed in the Draft Policy are also consistent with County-wide housing policy. Consistent with the original

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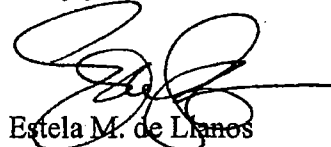
intent of the City's Interim Policy, we have suggested that the County's Mello Policy should allow any project that qualifies for a density bonus to be deemed to have satisfied its Mello Act requirement.

2. Replacement Units Do Not Have to be "Like-for-Like" Under the Mello Act or Under the City's Interim Policy. During the September 7 workshop, POWER also argued that the proposed policy of allowing replacement units to fall into a different income category or feature a different number of bedrooms than the units that were being replaced was not permitted under the Mello Act and was inconsistent with the City's Interim Policy. This is not true. The Mello Act states that the conversion or demolition of existing affordable units is not permitted unless "provision has been made for the replacement of those dwelling units with *units* for persons and families of low or moderate income." (Government Code section 65590(b)(emphasis added)). There is no requirement that the replacement units be "like-for-like" in any respect. Similarly, Section 7.2.1 of the City's Interim Policy states:

Affordable Replacement Units may be provided at any level of affordability. For example, an Affordable Existing Residential Unit occupied by a Very Low Income Household may be replaced with an Affordable Replacement Unit affordable to a Moderate Income Household. The Council may change this policy when the Interim Ordinance is adopted and require "like for like" replacement. (City's Interim Policy, at 21).

We appreciate your careful consideration of this information and would be pleased to provide any additional information you may require or that is appropriate to address any questions you may have. We commend the Task Force on its hard work and look forward to working with you to identify ways of maximizing housing production in the County.

Truly yours,



Estela M. de Llanos  
of LATHAM & WATKINS LLP

Enclosures

cc: Honorable Supervisors  
Julie Moore  
Larry Hafetz  
Tom Faughnan  
Mark Kelly  
Cindy Starrett

**APPENDIX A**

**DISCUSSION DRAFT ORDINANCE**

## APPENDIX A

### **PROPOSED ORDINANCE FOR DISCUSSION**

An ordinance adding a new Section 12.20.2.2 and a new Section 19.14 to the Los Angeles Municipal Code establishing regulations to protect and increase the supply of housing affordable to households with Very Low, Low, or Moderate Incomes in the Coastal Zone; and amending Chapter 128 of Division 5 of the Los Angeles Administrative Code concerning the Coastal Zone Affordable Housing Trust Fund and establishing a new Mello Act Ordinance Appeals Trust Fund.

### **THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:**

**Section 1.** A new Section 12.20.2.2 is hereby added to Article 2 of Chapter 1 of the Los Angeles Municipal Code to read:

**A. Purpose.** In accordance with California Government Code Section 65590 (k), the purpose of this section is to establish regulations to protect and increase the supply of housing affordable to households with Very Low, Low, or Moderate Incomes in the Coastal Zone. These regulations shall be known as the "Mello Act Ordinance."

**B. Definitions.** Notwithstanding any provisions of this chapter to the contrary, the following definitions shall apply to this ordinance:

**Administrative Procedures** means the procedures adopted by resolution of the Council to administer and enforce this ordinance.

**Affordable Existing Residential Unit** means an existing Residential Unit occupied by a household with a Very Low, Low, or Moderate Income, as determined by the Los Angeles Housing Department (LAHD).

**Affordable Housing Incentives Guidelines** refers to the definition of "Affordable Housing Incentives Guidelines" in Section 12.22 A 25 (b) of this Code.

**Affordable Housing Provision Plan** is a document that shows how Affordable Replacement Units or Inclusionary Residential Units will be provided in accordance with this ordinance, the Administrative Procedures, and the Affordable Housing Incentives Guidelines.

**Affordable Replacement Unit** means a Residential Unit that has the same number of bedrooms as the Affordable Existing Residential Unit that was removed or converted, and is also a "Restricted Affordable Unit" as defined in Section 12.22 A 25 (b) of this Code.



**Coastal Zone** means the Coastal Zone, as defined in California Public Resources Code, Division 20 (commencing with Section 30000), including, but not limited to, the Coastal Zone portions of Venice, San Pedro, Pacific Palisades, Playa Vista, Wilmington, Fort MacArthur/White Point, Palms/Marina Freeway Area, and Del Ray Lagoon, as depicted on the City of Los Angeles Coastal Zone maps, as prepared and maintained by the Department of City Planning. In the case of any discrepancy, the Public Resources Code shall govern.

**Coastal Zone Affordable Housing Trust Fund** is the reserve account described in Chapter 128, Division 5 of the Los Angeles Administrative Code.

**Extended Coastal Zone** means that area within the City of Los Angeles within three miles of the inland boundary of the Coastal Zone.

**Inclusionary Residential Unit** means a Residential Unit that is also a "Restricted Affordable Unit," as defined in Section 12.22 A 25 (b) of this Code, but is not an Affordable Replacement Unit.

**Income, Very Low, Low, or Moderate** refers to the annual income of a household, as defined in Sections 50079.5, 50093, 50105, and 50106 of the California Health and Safety Code.

**Local Coastal Program** refers to the definition of "Local Coastal Program" in Section 12.20.2 B of this Code.

**Mello Act Project Permit Compliance** shall mean a decision by the assigned decision-maker that a Project complies with the regulations set forth in Section 12.20.2.2 E of this Code, either as submitted or with conditions imposed to achieve compliance.

**Pacific Palisades Subarea** means that area of the City of Los Angeles depicted as subarea one on the Coastal Zone map attached to the Administrative Procedures.

**Project** means any action requiring a building permit approved by LADBS or a discretionary land use approval approved by a decision-maker that:

(1) removes one or more existing Residential Units through a change to a non-residential use—**Change of Use**;

(2) converts one or more existing Residential Units to a condominium, cooperative, or similar form of ownership—**Condominium Conversion**;

(3) removes one or more existing Residential Units through the complete or partial demolition of a building, or by combining two or more units to make a larger unit—**Demolition**; or

(4) creates one or more new Residential Units for rent or for sale, either through new construction or the adaptive reuse of existing, non-residential structures—**New Housing**.

**Project Applicant** means the person, partnership, corporation, governmental organization or other entity filing an application for a Project with either LADBS or LADCP.

**Rental Housing Production Fees** means the fees set forth in Section 12.95.2 K of this Code.

**Residential Unit** means a dwelling unit, efficiency dwelling unit, light housekeeping room, or joint living and work quarters, as defined in Section 12.03 of this Code; a mobile home, as defined in California Health and Safety Code Section 18008; a mobile home lot in a mobile home park, as defined in California Health and Safety Code Section 18214; or a guest room or efficiency unit in a residential hotel, as defined in California Health and Safety Code Section 50519 (b)(1).

**San Pedro-Harbor Subarea** means that area of the City of Los Angeles depicted as subarea three on the Coastal Zone map attached to the Administrative Procedures.

**Venice-Playa Del Rey Subarea** means that area of the City of Los Angeles depicted as subarea two on the Coastal Zone map attached to the Administrative Procedures.

**C. Relationship to Existing Regulations.** The relationship between this ordinance and other regulations that also apply to the Coastal Zone is set forth below:

1. Every Project in the Coastal Zone must receive the proper review pursuant to this ordinance regardless if the Project is regulated by any geographically specific plan or Local Coastal Program. This requirement also applies to any Project exempted from the requirement to obtain a coastal development permit.

2. In the case of conflict between this ordinance, any geographically specific plan, Local Coastal Program, or any other regulation, the requirement that results in the largest number of Affordable Replacement Units or Inclusionary Residential Units shall apply.

3. This ordinance shall not abrogate any existing development agreement between a property owner and the City of Los Angeles executed prior to this ordinance's effective date.

4. This ordinance and the Administrative Procedures shall replace and supercede the interim administrative procedures that are attached as Exhibit A to the settlement agreement that took effect on January 3, 2001, in the matter of *Venice Town Council, et al., vs. City of Los Angeles*, BC089678.

**D. Administrative Procedures.** City decision-makers, departments, staff, employees, agents, officers, commissions and appellate bodies must administer and enforce this ordinance in accordance with the Administrative Procedures.

**E. Regulations.**

**1. Affordable Existing Residential Units.** LAHD shall have up to 60 days from the date of referral by LADCP to determine if any existing Residential Units in a Change of Use, Condominium Conversion or Demolition Project are Affordable Existing Residential Units. This time limit may be extended as mutually agreed upon in writing by LADCP and LAHD. In the event that an existing Residential Unit is occupied by more than one person or family, and if at least one such person or family (excluding dependents) is of Very Low, Low, or Moderate Income, then the existing Residential Unit shall be considered to be an Affordable Existing Residential Unit.

**Exemptions:** No Residential Unit shall be considered to be an Affordable Existing Residential Unit if it: (1) was completely and continuously unoccupied for more than one year immediately prior to the filing of an application for a Change of Use, Condominium Conversion or Demolition Project; (2) is occupied by its owner or owners at the time the application for a Change of Use, Condominium Conversion or Demolition Project is filed, except for a mobile home, as defined in California Health and Safety Code Section 18008; or a mobile home lot in a mobile home park, as defined in California Health and Safety Code Section 18214; or (3) is in a building a governmental agency has declared a public nuisance pursuant to Division 13 (commencing with Section 17000) of the California Health and Safety Code; Chapter IX, Article 1, Division 89 of this Code; or any subsequent provision of this Code adopted pursuant to Division 13 of the California Health and Safety Code.

**2. Affordable Replacement Units.** All Affordable Existing Residential Units that are removed or converted must be replaced one-for-one with Affordable Replacement Units or an in-lieu fee is paid.

**(a) In-Lieu Fees.** Project Applicants may pay the following fees in lieu of directly providing required Affordable Replacement Units:

Subarea	Fee
Pacific Palisades	A fee of \$220,061 must be paid for each required Affordable Replacement Unit.
Venice-Playa Del Rey	A fee of \$209,075 must be paid for each required Affordable Replacement Unit.
San Pedro-Harbor	A fee of \$178,835 must be paid for each required Affordable Replacement Unit.

**(b) Affordability Level.** An Affordable Replacement Unit must be offered at the same level of affordability as the Affordable Existing Residential Unit that was removed or converted.

**(c) Right of First Refusal.** The last household to occupy a removed or converted Affordable Existing Residential Unit shall have a right of first refusal to occupy an Affordable Replacement Unit when it becomes available for occupancy, but must have a qualifying income, as determined by LAHD.

**(d) Legal Status.** An Affordable Existing Residential Unit shall be subject to the provisions of this subdivision regardless if it was legally permitted or not.

**3. Inclusionary Residential Units.** All New Housing and Condominium Conversion Projects consisting of five or more Residential Units for sale must either provide Inclusionary Residential Units or pay an in-lieu fee.

**Exemption:** The requirements set forth in this subdivision shall not apply to additional market-rate Residential Units included in a New Housing Project pursuant to a density bonus, as set forth in Section 12.22 A 25 of this Code.

**(a) Requirements.** This ordinance's requirements concerning Inclusionary Residential Units are set forth in the following chart:

Subarea	Project Size	
	5-9 units	10 or more units
Pacific Palisades	The Project Applicant must pay an in-lieu fee of \$8,824 for every market-rate Residential Unit in the Project.	The Project Applicant must provide Inclusionary Residential Units affordable to Very Low Income Households equal to at least ten percent of all Residential Units in the Project or pay an in-lieu fee of \$22,006 for every market-rate Residential Unit in the Project.
Venice-Playa Del Rey	The Project Applicant must pay an in-lieu fee of \$8,383 for every market-rate Residential Unit in the Project.	The Project Applicant must provide Inclusionary Residential Units affordable to Very Low Income Households equal to at least ten percent of all Residential Units in the Project or pay an in-lieu fee of \$20,907 for every market-rate Residential Unit in the Project.
San Pedro-Harbor	The Project Applicant must pay an in-lieu fee of \$7,170 for every market-rate Residential Unit in the Project.	The Project Applicant must provide Inclusionary Residential Units affordable to Very Low Income Households equal to at least ten percent of all Residential Units in the Project or pay an in-lieu fee of \$17,883 for every market-rate Residential Unit in the Project.

(b) **Project Size Adjustment.** Any required Affordable Replacement Units shall first be subtracted from total Project size before applying the requirements set forth in Section 12.20.2.2 E 3 of this Code.

(c) **Fractions.** The number of Inclusionary Residential Units required pursuant to Section 12.20.2.2 E 3 of this Code shall be rounded upwards from fractions of one-half ( $\frac{1}{2}$ ) and more to result in one more required Inclusionary Residential Unit; and rounded downwards from fractions of less than one-half ( $\frac{1}{2}$ ) to result in one less required Inclusionary Residential Unit.

**4. Additional Regulations.** The following additional regulations shall apply to the provision of Affordable Replacement Units and Inclusionary Residential Units.

(a) **Tenure.** Affordable Replacement Units or Inclusionary Residential Units may be either rented, leased, or sold.

**(b) Location.** Project Applicants may locate Affordable Replacement Units or Inclusionary Residential Units anywhere in the Coastal Zone or the Extended Coastal Zone. Notwithstanding, the assigned decision-maker or appellate body, in consultation with LAHD, may require that the units be located in a defined geographic area within the Coastal Zone or Extended Coastal Zone.

**(c) Availability for Occupancy.** Affordable Replacement Units must be available for occupancy within three years of the date that work commenced on the Change of Use, Condominium Conversion or Demolition Project. Inclusionary Residential Units must be available for occupancy as follows:

(1) if provided on-site by the Project Applicant, at the same time as the market-rate Residential Units are available for occupancy;

(2) if provided off-site by the Project Applicant, within three years of the date LAHD approves the Affordable Housing Provision Plan; or

(3) if provided by a Coastal Zone Affordable Housing Trust Fund provider, within three years of the date a contract is executed between LAHD and the provider.

**(d) Approved Provision Methods.** Subject to LAHD's review and approval, Affordable Replacement Units or Inclusionary Residential Units may be provided through either:

(1) new construction from the ground up;

(2) the adaptive reuse of existing non-residential buildings;

(3) the purchase and rehabilitation of vacant residential buildings;

or

(4) the purchase of existing market-rate Residential Units, including units under construction.

**(e) Affordable Housing Incentives Guidelines.** Affordable Replacement Units and Inclusionary Residential Units must be provided in accordance with the Affordable Housing Incentives Guidelines, as applicable.

**(f) Affordable Housing Provision Plan.** Project Applicants that will directly provide required Affordable Replacement Units or Inclusionary Residential Units must prepare an Affordable Housing Provision Plan for LAHD's review and approval.

**(g) Affordability Covenant and Agreement.** LAHD shall develop and the Project Applicant shall record a covenant and agreement guaranteeing that required Affordable Replacement Units and Inclusionary Residential Units shall remain affordable for at least 55 years from the date the covenant and agreement is recorded. Tenants, rental applicants, purchasers and prospective purchasers of the Affordable Replacement Units or the Inclusionary Residential Units shall have the right to seek an injunction to enforce the affordability criteria, or to raise the affordability criteria as a defense or counterclaim to a claim for rent or possession directly against the owner, manager, and/or their successors in interest, of those units.

**(h) Registration and Occupancy Monitoring.** All Affordable Replacement Units and Inclusionary Residential Units provided pursuant to this ordinance must be registered with LAHD. LAHD shall annually monitor each Affordable Replacement Unit and Inclusionary Residential Unit to ensure that it remains affordable to and occupied by a Very Low, Low, or Moderate Income Household. All registration and occupancy monitoring fees as set forth in Section 19.14 G of this Code must be paid.

**F. Coastal Zone Affordable Housing Trust Fund.** Pursuant to Chapter 128, Division 5 of the Los Angeles Administrative Code, LAHD shall administer the Coastal Zone Affordable Housing Trust Fund.

1. LADBS shall collect and deposit in-lieu fees into the Coastal Zone Affordable Housing Trust Fund.

2. If a Project Applicant elects to pay in-lieu fees, then they must be paid in full prior to LADBS's issuance of any permits. Alternatively, Project Applicants may post a performance bond, acceptable to LAHD, that guarantees full payment of the in-lieu fees within one year of LADBS's issuance of any permits.

3. If in-lieu fees, Rental Housing Production Fees, or any other similar affordable housing fees all apply to a project, then the greatest of these fees shall apply. Any fees collected shall first be deposited into the Coastal Zone Affordable Housing Trust Fund. Then, to the extent that there are fees above and beyond those required for deposit into the Coastal Zone Affordable Housing Trust Fund, those additional fees shall be deposited into the Rental Housing Production Fund or similar applicable affordable housing trust fund or reserve account.

4. In-lieu fees may be used to finance the development of Affordable Replacement Units or Inclusionary Residential Units anywhere in the Coastal Zone or the Extended Coastal Zone, subject to Council policy. These fees may not be used to cover the City's costs related to administering the Coastal Zone Affordable Housing Trust Fund or this ordinance.

5. Every year LAHD shall adjust the in-lieu fees set forth in this ordinance to account for the annual change in construction and land costs in the Coastal Zone and Extended Coastal Zone. The City Council shall adopt the adjusted in-lieu fees by resolution.

**G. Mello Act Project Permit Compliance.** A Mello Act Project Permit Compliance is required if the Project is a New Housing or a Condominium Conversion Project consisting of five or more Residential Units for sale, or Affordable Existing Residential Units will be removed or converted.

**1. Notice of Exemption.** If a Project does not require a Mello Act Project Permit Compliance then the Project Applicant shall be issued a notice of exemption.

**2. Application.** To apply for a required Mello Act Project Permit Compliance, the Project Applicant must file an application at a public office of the LADCP, on a form provided by the Department, and include all information as required by the Administrative Procedures. In addition, the Project Applicant must pay the applicable administrative fee set forth in Section 19.14 D of this Code.

**3. Authority.** The assigned decision-maker shall have the authority to approve, approve with conditions, or deny an application for a Mello Act Project Permit Compliance.

**4. Finding.** In order to grant a Mello Act Project Permit Compliance the assigned decision-maker must find that the Project, either as submitted or conditioned, complies with the regulations set forth in Section 12.20.2.2 E of this Code.

**5. Limitation.** The granting of a Mello Act Project Permit Compliance shall not imply compliance with any other provisions of this Code.

**6. Expiration Period.** A Mello Act Project Permit Compliance shall become null and void if not utilized within two years of its effective date. For purposes of this subdivision, "utilized" shall mean that work on the Project has begun and been carried on diligently without substantial suspension or abandonment. The assigned decision-maker may extend the expiration period pursuant to an application filed by the Project Applicant at any public office of the LADCP, accompanied by payment of a fee equal to that specified in Section 19.01 M of this Code. The application must be filed prior to the expiration date, and set forth the reasons why an extension of time is needed. If good and reasonable cause exists then the assigned decision-maker may extend the expiration period by up to one year.

**7. Procedures.** If a Project requires both a Mello Act Project Permit Compliance and one or more other discretionary land use approvals, then the procedures set forth in Section 12.36 of this Code concerning multiple approvals shall govern. If a Project



only requires a Mello Act Project Permit Compliance and no other discretionary land use approvals, then the assigned decision-maker is the Director of Planning and the procedures set forth below shall govern:

**(a) Optional Public Informational Meeting.** The Director may hold a public informational meeting concerning an application for a Mello Act Project Permit Compliance if the Director decides that doing so would be in the public interest. In that event, notice of the meeting shall be provided following the procedures set forth in Section 12.20.2.2 H 3 (b) of this Code.

**(b) Time Limit and Failure to Act-Transfer of Jurisdiction.** The Director shall make a decision approving, approving with conditions or denying an application for a Mello Act Project Permit Compliance within 75 days after the date the application is deemed complete. This time limit may be extended as mutually agreed upon in writing by the Project Applicant and the Director. If the Director fails to act within this time limit then the transfer of jurisdiction procedures set forth in Section 11.5.7 C 5 of this Code shall govern.

**H. Appeals.** The Project Applicant or any other person aggrieved by the decision-maker's decision may appeal the Mello Act Project Permit Compliance to the designated appellate body. The appellate body may, by resolution, reverse or modify, in whole or in part, the Mello Act Project Permit Compliance, so long as it finds that its decision is consistent with the Mello Act. The appellate body's decision shall be final and effective as provided in Charter Section 245.

**1. Decision.** The appellate body shall make its decision, based on the record, as to whether the decision-maker erred or abused its discretion. Appellants shall have the burden of proof, and shall present substantial evidence and specific facts to support their appeal. Appellants must set forth specifically the points at issue and the reasons for the appeal. If a violation of federal or state law or of the federal or state constitutions is claimed, then the appeal shall set forth the basis upon which the appellant makes this claim.

**2. Economically Viable Use.** If the basis for the appeal is a claim that application of the regulations set forth in the Mello Act Ordinance constitutes an unconstitutional taking that denies the appellant economically viable use of the subject property then the appellate body may require the appellant to pay the fees set forth in Section 19.14 F of this Code to compensate a qualified and independent consultant, selected and retained by LAHD, to prepare a report evaluating the merits of this claim. Pursuant to Section 5.528.1 of the Los Angeles Administrative Code, LAHD shall collect and deposit these fees into the Mello Act Ordinance Appeals Trust Fund. The consultant's report shall be submitted to the appellate body within 60 days of the

appellate's body request, or within an extended period as mutually agreed upon in writing by the appellate body and LAHD.

**3. Procedures.** If a Project requires both a Mello Act Project Permit Compliance and one or more other discretionary land use approvals, then the procedures set forth in Section 12.36 of this Code concerning multiple approvals shall govern. If a Project only requires a Mello Act Project Permit Compliance and no other discretionary land use approvals, then the appellate body is the Area Planning Commission and the procedures set forth below shall govern:

**(a) Filing of an Appeal.** An appeal must be filed within 15 days of the date of mailing of the Director of Planning's Mello Act Project Permit Compliance on forms provided by LADCP. The Mello Act Project Permit Compliance becomes final and effective upon the close of the 15-day appeal period if not appealed, or as provided below if appealed.

The Commission shall not consider any appeal not filed within the 15-day appeal period. The filing of an appeal stays proceedings in the matter until the Commission has made a decision. Once an appeal is filed, the Director shall transmit the appeal and the file to the Commission, together with any reports that may have been prepared responding to the allegations made in the appeal.

**(b) Public Hearing.** Before acting on any appeal, the Commission shall set the matter for public hearing, at which evidence shall be taken. The Commission may conduct the hearing itself, or may designate a hearing officer to conduct the hearing. The Commission shall give notice in all of the following manners:

**(1)** By at least one publication in a newspaper of general circulation in the City of Los Angeles, designated for that purpose by the City Clerk, no less than 24 days prior to the date of the hearing; and

**(2)** By mailing a written notice no less than 24 days prior to the date of the hearing to the parties specified in Section 12.20.2.2 I of this Code.

**(c) Time for Appellate Decision.** The Commission shall act within 75 days after the expiration of the appeal period, or within any additional period that the Project Applicant and the Commission both agree to in writing. The Commission's failure to adopt a resolution within this time period shall be deemed a denial of the appeal.

**I. Notice.** A copy of the notice of exemption, Mello Act Project Permit Compliance, notice of the optional public informational meeting, notice of appellate body public hearing, and appeal decision shall be mailed to: the Project Applicant; to the owner of the subject property, if other than the Project Applicant; to all occupants of buildings in a Change of Use, Condominium Conversion or Demolition Project; to the owners of all

properties abutting, across the street or alley from, or having a common corner with the subject property; to all persons who have filed written requests for notice with LADCP; the applicable Council office; LADBS; LAHD; the Department of Neighborhood Empowerment; and to all persons as required by the Administrative Procedures.

**J. Annual Report.** Every year after the effective date of this ordinance LAHD shall compile, with the assistance of LADBS and LADCP, a report that covers the period from July 1 through June 30 of the prior year.

**K. Severability.** If any provisions of this ordinance are found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance, which can be implemented without the invalid provision, and to this end the provisions of this ordinance are declared to be severable.

**Sec. 2.** Chapter 128 of Division 5 of the Los Angeles Administrative Code is hereby amended to read:

#### **CHAPTER 128**

#### **COASTAL ZONE AFFORDABLE HOUSING TRUST FUND SPECIAL FUNDS**

##### **Section 5.528. Coastal Zone Affordable Housing Trust Fund.**

**A. Creation and Administration of Fund.** This ordinance creates within the Treasury of the City of Los Angeles a special fund known as the Coastal Zone Affordable Housing Trust Fund, ~~referred to in this chapter as the Fund.~~ (the "Fund") The Los Angeles Housing Department (LAHD) shall administer, have overall management of and expend funds from the Fund in accordance with the provisions of this ordinance. LAHD shall also administer the Fund in accordance with established City practice and in conformity with Government Code Section 66000, *et seq.* All interest or other earnings from money received into the Fund shall be credited to the Fund and devoted to the purposes listed in this chapter.

**B. Purpose.** The Fund shall be used for the deposit of money paid to the City of Los Angeles pursuant to the Mello Act Ordinance and any other money appropriated or given to this Fund for affordable housing in the Coastal Zone, or within three miles of the inland boundary of the Coastal Zone.

**C. Expenditures.** Except as set forth below, funds collected pursuant to the Mello Act Ordinance and any other monies placed in this Fund shall be expended only for the purpose of developing affordable housing in the Coastal Zone, or within three miles of the inland boundary of the Coastal Zone.

LAHD is authorized to make expenditures from ~~this~~ the Fund in accordance with the Mello Act Ordinance. Administration of the Fund and expenditures from the Fund shall also be in compliance with the requirements in Government Code Section 66000, *et seq.*, including the following:

1. The City Departments shall deposit all monies received pursuant to the Mello Act Ordinance in the Fund and avoid any commingling of the monies with other City revenues and funds, except for temporary investments, and expend those monies solely for the purpose for which the in-lieu fee was collected. Any interest income earned by monies in the Fund shall also be deposited in that Fund and shall be expended only for the purpose for which the in-lieu fee was originally collected.

2. LAHD shall, within 180 days after the last day of each fiscal year, make available to the public all the information required by Government Code Section 66006 (a).

3. The City Council shall review the information made available to the public pursuant to Paragraph 2 within the time required by Section 66006, and give notice of that meeting as required by that Section.

4. When required to do so by Government Code Section 66001 (e) and (f), the City Council shall authorize refunds of fees paid to the Fund. Funds shall be used for the purposes set forth in Subsection B. Should any project become infeasible for any reason determined by the City Council or there are project savings, the City Council may reprogram the applicable funds so long as the funds are used for the purposes set forth above.

Regulations to administer these funds shall be promulgated by LAHD.

**D. Reporting.** LAHD shall report annually to the City Council and Mayor identifying and describing in detail receipts and expenditures of the Fund. LAHD shall submit each annual report within 60 days after the close of the fiscal year covered in the report.

#### **Section 5.528.1. Mello Act Ordinance Appeals Trust Fund.**

**A. Creation and Administration of Fund.** This ordinance creates within the Treasury of the City of Los Angeles a special fund known as the Mello Act Ordinance Appeals Trust Fund (the "Fund"). The Los Angeles Housing Department (LAHD) shall administer, have overall management of, and expend fund from the Fund in accordance with the provisions of this ordinance. LAHD shall administer the Fund in accordance with established City practice. All interest or other earnings from money received into the Fund shall be credited to the Fund and devoted to the purposes listed in this ordinance.

**B. Expenditures.** Pursuant to Section 12.20.2.2 H 2 of the Los Angeles Municipal Code, the Fund shall be used to cover LAHD's cost to compensate consultants to evaluate the merits of Mello Act Project Permit Compliance appeals when the basis for the appeal is a claim that application of the regulations set forth in the Mello Act Ordinance constitutes an unconstitutional taking that denies the Appellant economically viable use of the subject property

**C. Procedures.** LAHD is authorized to establish appropriate procedures to carry out this ordinance.

**Sec. 3.** A new Section 19.14 is hereby added to Article 9 of Chapter 1 of the Los Angeles Municipal Code to read:

**MELLO ACT ORDINANCE ADMINISTRATIVE FEES.** In addition to all other fees payable to the City of Los Angeles, the following administrative fees must be paid in connection with Section 12.20.2.2 of this Code, otherwise known as the "Mello Act Ordinance."

**A.** A fee of \$240.00 shall be charged and collected by the Los Angeles Housing Department (LAHD) when the affordability status of an existing Residential Unit is determined, and \$300.00 when redetermined, pursuant to Section 12.20.2.2 E 1 of this Code.

**B.** If an in-lieu fee pursuant to Section 12.20.2.2 E of this Code is paid, then a surcharge equal to five percent of the total amount of the in-lieu fee shall be charged and collected by LAHD.

**C.** A fee of \$500.00 shall be charged and collected by LAHD when an Affordable Housing Provision Plan prepared by a Project Applicant is reviewed, pursuant to Section 12.20.2.2 E 4 of this Code.

**D.** Pursuant to Section 12.20.2.2 G of this Code, the Los Angeles Department of City Planning (LADCP) shall charge and collect:

**1.** A fee of \$232.00 when applications for a Mello Act Project Permit Compliance and a discretionary land use approval are concurrently filed; or

**2.** A fee of \$860.00 when only an application for a Mello Act Project Permit Compliance is filed.

**E.** If a Mello Act Project Permit Compliance is appealed pursuant to Section 12.20.2.2 H of this Code, then LADCP shall charge and collect:

1. The appeal fees connected to the discretionary land use approval if it was filed concurrently with an application for a Mello Act Project Permit Compliance; or

2. The appeal fees set forth in Section 19.01 B of this Code if only an application for a Mello Act Project Permit Compliance was filed;

F. An initial fee of \$5,000.00 shall be charged and collected by LAHD if the assigned appellate body requests a consultant report when a Mello Act Project Permit Compliance is appealed based on a claim that application of the regulations set forth in the Mello Act Ordinance constitutes an unconstitutional taking that denies the appellant economically viable use of the subject property pursuant to Section 12.20.2.2 H 2 of this Code. This fee shall cover LAHD's initial cost to compensate the consultant to evaluate the merits of the claim. If LAHD's cost to compensate the consultant exceeds \$5000.00, then the appellant shall pay a supplemental fee equal to the additional cost. If the actual cost is less than \$5000.00, then the LAHD shall refund the difference to the appellant.

LAHD shall deposit the initial and supplemental fees into the Mello Act Ordinance Appeals Trust Fund, as described in Section 5.528.1 of the Los Angeles Administrative Code.

G. A one-time registration fee of \$370.00 shall be charged and collected by LAHD each time a certificate of occupancy is issued for an Affordable Replacement Unit or an Inclusionary Residential Unit. Thereafter, an annual fee of \$370.00 shall be charged and collected by LAHD each time the occupancy of an Affordable Replacement Unit or an Inclusionary Residential Unit is monitored pursuant to Section 12.20.2.2 E 4 of this Code.

Sec.4. The City Clerk shall certify...

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## MEMORANDUM

June 20, 2006

### VIA EMAIL

To: Mello Act Policy Task Force  
From: Cindy Starrett  
Estela de Llanos  
File no:  
Copies to: Mark Kelly  
Subject: County Mello Act Policy

We appreciate the opportunity to supplement our memo of May 25, 2006, in which we described several policy considerations that we hope the recently-convened Mello Act Policy Task Force will consider in formulating its Mello Act recommendations to the Board of Supervisors.

In the County-owned Marina, approximately 1,300 market-rate units are expected to be proposed under the remaining lease extensions. Application of the County's current Mello Act policy to these lease extensions would trigger approximately 130 new low-income units (in addition to any replacement units, which under the Mello Act do not need to be provided in the Marina). Recent projects have provided or are expected to provide a number of affordable units. In addition to generating substantial revenues for the County, the Marina is a public recreational resource protected under the Coastal Act. It includes some of the most expensive and difficult land to develop within the County and is subject to a number of development constraints, both legal and political.

The challenge of the Task Force is to balance these and other important considerations in formulating its recommendations. Because the need for new housing has reached critical proportions, we urge the County to consider the full range of compliance options available under the Mello Act, especially alternatives capable of generating a greater number of units at the same cost.

By Allowing Flexible Options For Complying with the Mello Act, the County Can Provide Affordable Housing Without Reducing Lease Revenues. The potential for generating affordable housing is greatly increased by allowing off-site compliance options. As described in the attached analysis by CB Richard Ellis Consulting, the County can provide the required 10%

low income units elsewhere within the Marina without significantly reducing lease revenues, even assuming similar land costs and high quality design. Put differently, off-site compliance for just half of the anticipated 1,300 market-rate units could save the County as much as \$16 million in net present value of lost lease revenues otherwise needed to make the on-site projects financially feasible. This is in large part because off-site units can leverage Low Income Housing Tax Credits and other financing alternatives that are less likely to be available to projects with a large percentage of market-rate units. Importantly, affordable housing projects that meet certain criteria can also qualify for streamlined environmental review under the California Environmental Quality Act. Projects with inclusionary requirements typically do not meet those criteria.

*In Lieu Fees and Off-Site Compliance Are Two Alternatives Available Under the Mello Act and Used in Other Jurisdictions.* In lieu fees and off-site alternatives are permitted under the Mello Act and are used in other coastal cities and counties to comply with the Mello Act. Illustrating that there is no "one size fits all" approach to Mello Act compliance, requirements vary from jurisdiction to jurisdiction. In many cases, cities and counties have adopted jurisdiction-wide requirements that apply equally within and without the Coastal Zone (e.g., San Francisco and Monterey County). In other cases, replacement requirements do not apply because the city is exempt from such requirements under the Mello Act due to a shortage of vacant land available for residential use (e.g., El Segundo and Manhattan Beach).

Some jurisdictions have made an express finding that off-site alternatives or in lieu fees are desirable because of their potential to generate a greater number of affordable housing units. For example, in adopting its affordable housing policy, San Francisco determined that "[i]f a project applicant may produce a significantly greater number of affordable units off-site[,] then it is in the best interest of the City to permit the development of affordable units at a different location than that of the principle project." Similarly, Monterey County has determined that the in lieu fees allowed under its inclusionary housing ordinance are "appropriate and permissible." Other jurisdictions that allow off-site alternatives and/or payment of in lieu fees within coastal areas pursuant to their inclusionary housing ordinances include Newport Beach, Santa Monica, Oceanside, Pismo Beach, Coronado, Del Mar, Encinitas, San Clemente, and Santa Cruz.

Other jurisdictions have found ways to leverage in lieu fee payments directly or indirectly into off-site alternatives. One approach has been to allow developers to make a contribution directly to identified non-profit housing developers or the city/county housing authority for projects that are viable but need additional funding (e.g., Monterey County). Another approach has been to create an "affordable housing trust fund" that can be used to create and maintain affordable housing within the Coastal Zone (e.g., San Francisco and Santa Cruz). The Mello Act gives the County flexibility to implement these kinds of programs.

*Done Right, In Lieu Fees and Off-Site Alternatives Can Provide High-Quality Affordable Housing with Important Amenities, as Well as More Affordable Units.* Affordable housing projects are not, by definition, low quality housing projects. The attached photographs show examples of high quality affordable housing built by Bridge Housing at Irvine Ranch. (See attached photographs of recent Bridge Housing project.) As affordable housing developers know, off-site projects that are 100% or substantially affordable can be beautifully designed and



can feature amenities specifically tailored to meet residents' needs. For example, projects can be designed for especially for families by including computer rooms, homework centers, day care facilities or playground equipment that might not be included in a high-end luxury project geared more towards affluent professionals or retirees. This kind of special focus on well-designed, high quality amenities geared towards particular resident populations is the hallmark of such affordable housing programs as Century Housing's "More Than Shelter" program. (See attached Century Housing materials.)

*The County's Mello Act Policy Must Be Reconciled with State Density Bonus Requirements.* The County is currently considering an ordinance to implement SB 1818, which amended the state density bonus law that requires the County to provide developers with a number of incentives if a project includes an affordable housing component. The incentives vary according to such factors as the percentage of affordable housing that is proposed, whether the units are for very low-, low-, or moderate-income households, and whether a project is for-sale or for-rent. The changes required by SB 1818 generally make it easier for developers to qualify for incentives, which improve the feasibility of providing affordable housing. Notably, SB 1818 allows the County to provide incentives to developers that donate off-site land for purposes of developing affordable housing and to projects that include housing for moderate income households.

The County should ensure that any changes to the Mello Act policy are consistent with the County's SB 1818 implementation ordinance, which we understand the Board of Supervisors is scheduled to consider in late July. Activities that generate incentives under the state density bonus law – such as donations of off-site land and reservation of units for moderate income households – should be permitted and encouraged under the County's Mello Act policy. Because the Mello Act states that "local governments shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees" for new housing developments, any revisions to the current Mello Act policy should permit developers to take advantage of the full menu of incentives required under state law.

*The County's Policy Should Be Based on Input from All Stakeholders.* We strongly urge the Task Force to solicit input from stakeholders, including housing developers, affordable housing advocates, as well as non-profit housing developers and investors. Our experience on other housing projects and initiatives shows that the relevant policy issues and technical questions are best explored through a dialogue among diverse parties. Affordable housing developers, for example, can help identify compliance options and address the mechanics of affordable housing, while investors can address the rate of return required as a practical matter for economic feasibility. Together with these parties, the County can identify other alternative sites and potential development partners for Mello Act compliance either within the Marina, elsewhere within the Coastal Zone, or within three miles thereof.

Potential Approaches Under the Mello Act. In lieu fees and off-site alternatives, based on appropriate findings, are important tools for the County to consider in protecting its Marina-based revenues. Below are just some of the potential compliance options available under the Mello Act, which we hope the County will consider.

- *On-site Moderate Income Housing and Tiered Percentage Requirements.* On-site compliance could expressly permit developers to set aside units for moderate income households, rather than just low income households. The County could also consider requiring lesser percentage requirements for low-income housing than for moderate-income housing.
- *Off-site Joint Development by Marina Lessees of Marina Parcel.* The County could assist in identifying a site within the Marina to serve as the location for an affordable housing project that would be built using contributions from Marina lessees.
- *Requirement for Market-Rate Developers to Partner with Affordable Housing Developers for Off-site Projects.* The County could allow market-rate developers to partner with affordable housing developers to provide the required number of units off-site, either within the Marina, elsewhere within the Coastal Zone, or within three miles of the Coastal Zone.
- *Creation of Affordable Housing Trust Fund to Allocate In Lieu Fees Towards Identified Off-site Projects.* The County could establish an “affordable housing trust fund” to ensure that any fees collected for the purpose of providing affordable housing are used to build affordable housing. A list of eligible projects could be maintained to ensure that any funds are used to build housing.

We continue to hope that the Task Force’s recommendations include clear guidelines and flexible options for complying with the Mello Act. By establishing a consistent methodology for determining feasibility and allowing developers to comply with Mello Act requirements through a number of alternative compliance options, the housing supply – both market rate and affordable – can be increased.

# **CB RICHARD ELLIS CONSULTING**

June 20, 2006

Mr. Mark D. Kelly  
Sr. Vice President - Development  
Lyon Capital Ventures  
4901 Birch Street  
Newport Beach, CA 92660

**Re: Benefits of Offsite Affordable Housing For Los Angeles County Marina Del Rey**

Dear Mark:

With approximately 1,300 new housing units proposed for development in Marina del Rey, the County compliance with the Mello Act may require 130 affordable low income units (10%) to be developed. There are tremendous financial advantages to the County associated with providing offsite units as compared to a mandatory inclusionary policy. Although we cannot predict how many units will be developed using Type I construction versus cheaper Type V construction, per your request we have analyzed just the financial impacts to the County assuming 650 new units with Type I construction providing 65 on-site affordable units versus providing 65 offsite Type V construction units off-site elsewhere within the Marina.

The County's current policy provides for an in lieu fee of \$7.11 per square foot, which would generate approximately \$10 million based on an average +1,000 sf unit size (\$7,100 per unit). New projects have been designed to be feasible within a reasonable range of this fee.

**Onsite Units**

By requiring onsite inclusionary units for expensive concrete and steel construction mid-rise projects, the cost to build each unit is approximately \$450,000. After deducting the estimated \$50,000 market financing value generated by low income rent levels, it leaves a \$400,000 subsidy per unit. For 65 affordable units, this would require approximately \$26 million in total subsidy.

**Offsite Units**

By developing offsite affordable projects with 3-4 story wood-frame construction, units could be built for an average cost of \$275,000/unit - including land). After

Mark Kelly  
June 20, 2006  
Page 2

deducting the market value of \$50,000 per unit, the net subsidized cost is \$225,000 per unit, or 55% of the cost for Type I construction.

By developing 100% offsite affordable units, the Project would likely qualify for 9% LIHTC tax credits, which would provide approximately \$110,000 per unit in equity, or 45% of the net costs. Combined with the lower construction costs, 65 units could be built with a total private investment of \$7.5 million.

### Net Savings to County/Developer

As shown in Table 1, an inclusionary policy for 10% low-income units could result in up to a \$18.5 million extraordinary cost to the development community above the in lieu fees, making these projects infeasible without County rent adjustments. Offsite units would require only \$2.5 million increase in funding, a savings of \$16 million that could be applied to add more affordable units or helping enable the County to minimize the financial impact on proposed ground rent levels.

**Table 1**  
**Cost Comparison of Offsite vs. Onsite Units\***

	Onsite	Offsite	Net Change
65 Low Income Units			
Total Dev. Costs	\$26,000,000	\$17,500,000	10,000,000
Financing Value	<u>2,500,000</u>	<u>2,500,000</u>	=
Net Subsidy Required	\$23,500,000	\$15,000,000	10,000,000
Tax Credits	--	7,500,000	7,500,000
Net Cost	<u>\$23,500,000</u>	<u>7,500,000</u>	<u>17,500,000</u>
Current In Lieu Fees	\$5,000,000	\$5,000,000	--
Loss of County Rent For Feasibility	\$18,500,000	\$2,500,000	\$16,000,000

\*Illustrates impact of 10% onsite affordable on Type I construction projects. The cost differential for onsite Type V construction would be significantly less, but still material.

### Other Impacts

County ground rent is based on gross rental income received. We note that market rents have historically grown at several percentage points faster than median income. Therefore, under an on-site inclusionary scenario, the County will not only

Mark Kelly  
June 20, 2006  
Page 3

lose the 10.5% ground rent differential between current market rents and affordable rents, but this rent loss will widen substantially over the long-term.

In conclusion, there are major financial benefits for providing offsite affordable units as the County considers its Mello Act policy.

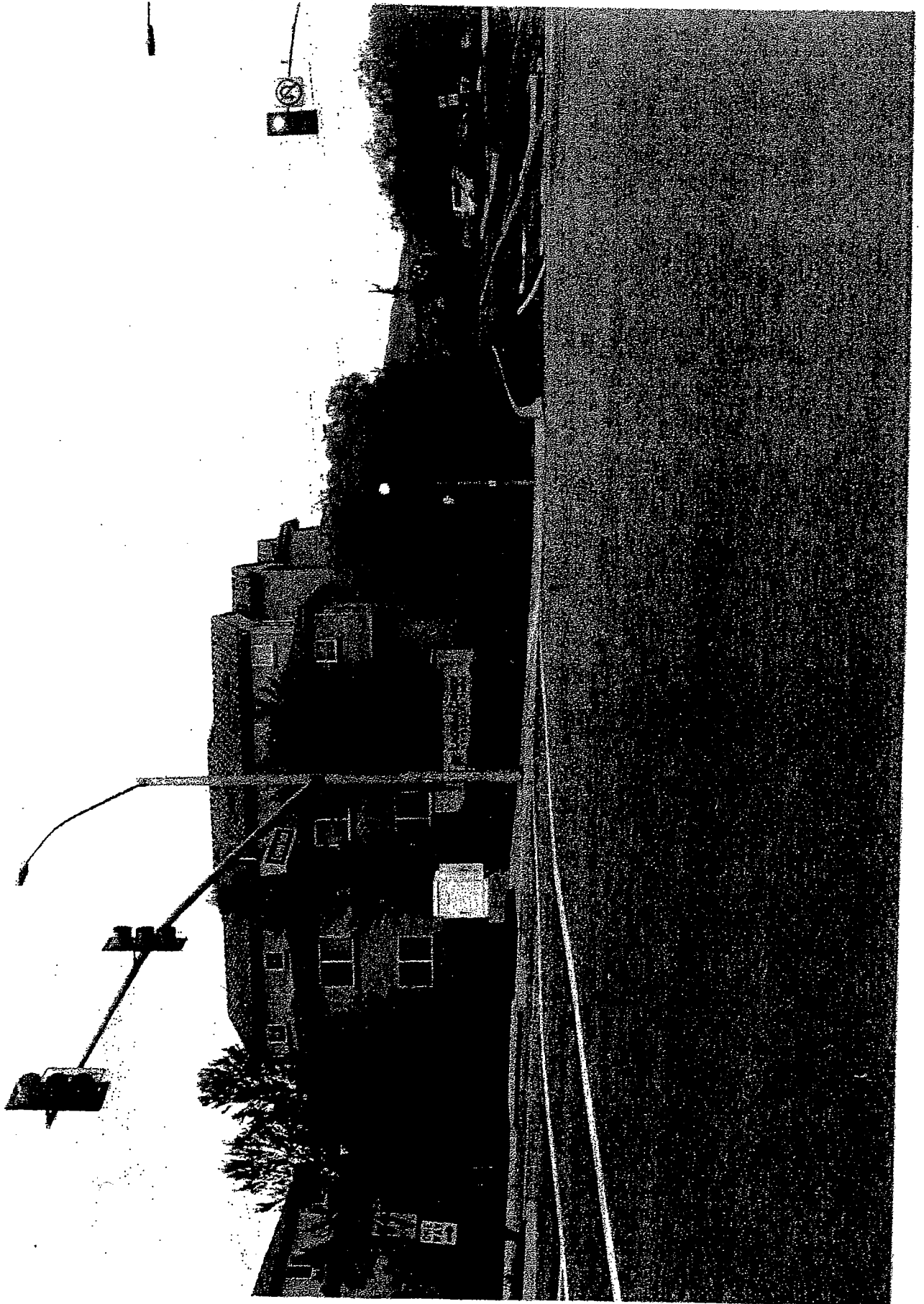
If you have any questions, please do not hesitate to call me.

Sincerely,

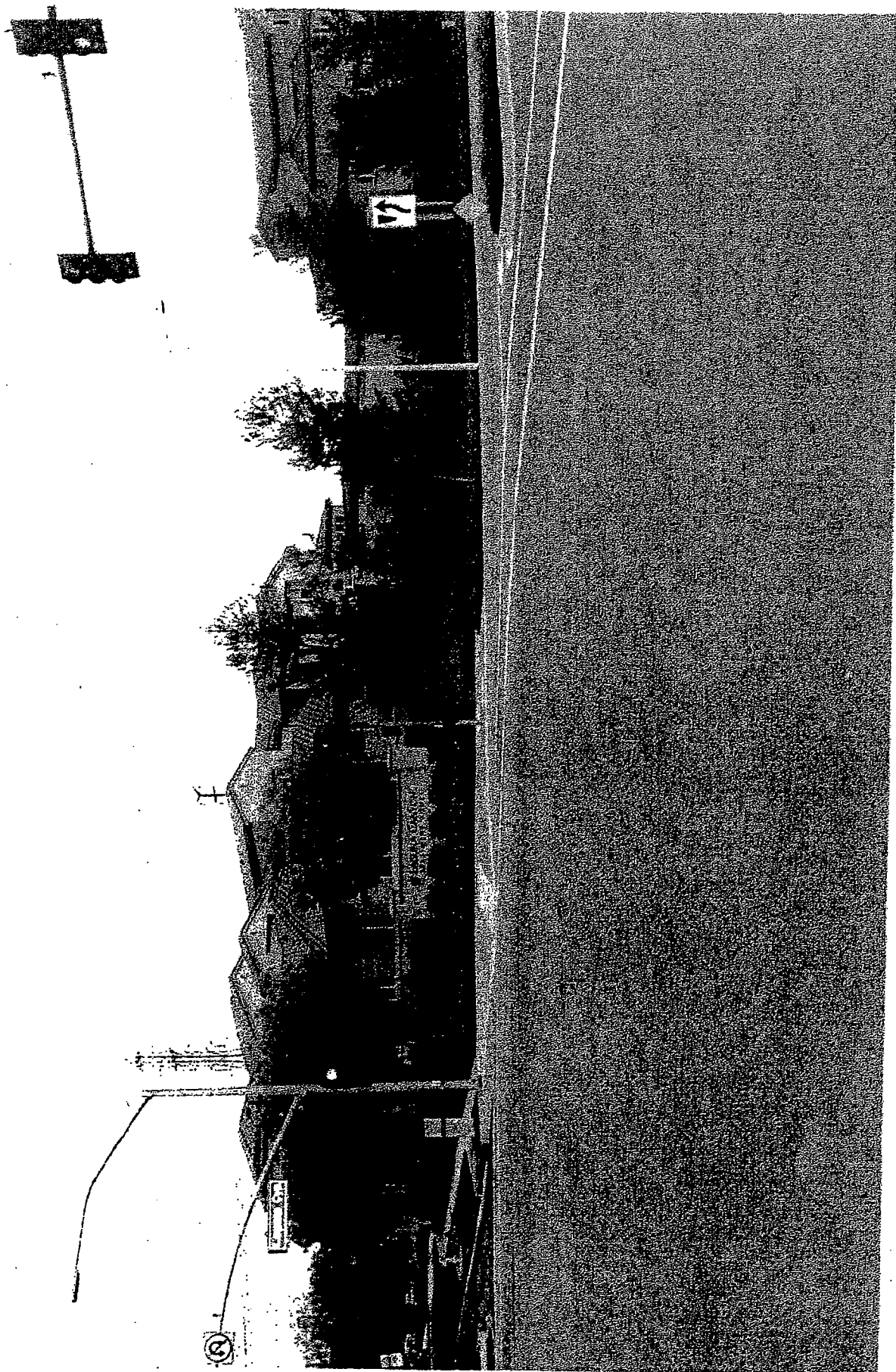


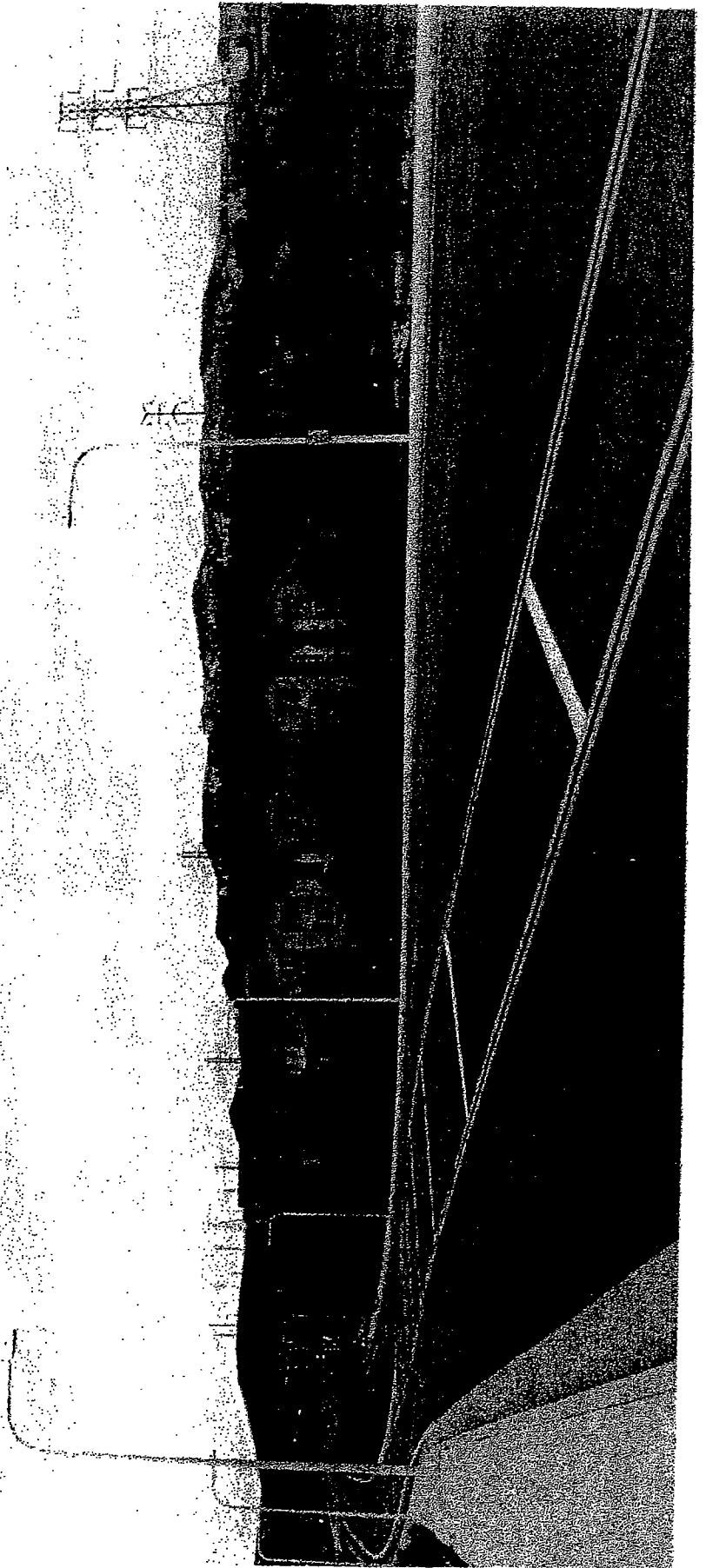
Thomas R. Jirovsky  
Sr. Managing Director.

**PHOTOGRAPHS OF  
BRIDGE HOUSING AT IRVINE RANCH**









**“MORE THAN SHELTER” PROGRAM  
(CENTURY HOUSING)**

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## *more than shelter:*

Century funded affordable housing developments include **More Than Shelter®**.

At Century, we help create affordable, quality, aesthetically pleasing housing. We work with developers and the adjacent community to include what we call **More Than Shelter** amenities designed to assist residents—from toddlers to seniors—with services and features they need most, such as child development centers, after-school academic tutoring, recreational facilities, and computer rooms. Other **More Than Shelter** programs include life-enhancing services and activities for seniors, construction job training and placement, and transitional housing and services for formerly homeless veterans. We believe that these **More Than Shelter** amenities turn a building into a home and a development into a community.

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*than*  
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To help support these important programs, Century Housing created **The More Than Shelter Fund**, devoted to raising operating and capital funds to create **More** quality child development centers, **More** after-school tutoring programs, **More** wellness programs for seniors, **More** construction job training and placement for local residents, **More** transitional housing for families

and individuals...**More Than Shelter**.

To learn more about how you can help support **The More Than Shelter Fund**, please visit The Fund's website at [www.morethanshelterfund.org](http://www.morethanshelterfund.org).

## More Than Shelter services include:

Child Development • After-School Academic Tutoring  
Transitional Housing & Homeless Veteran Services  
Senior Wellness • Job Training & Placement

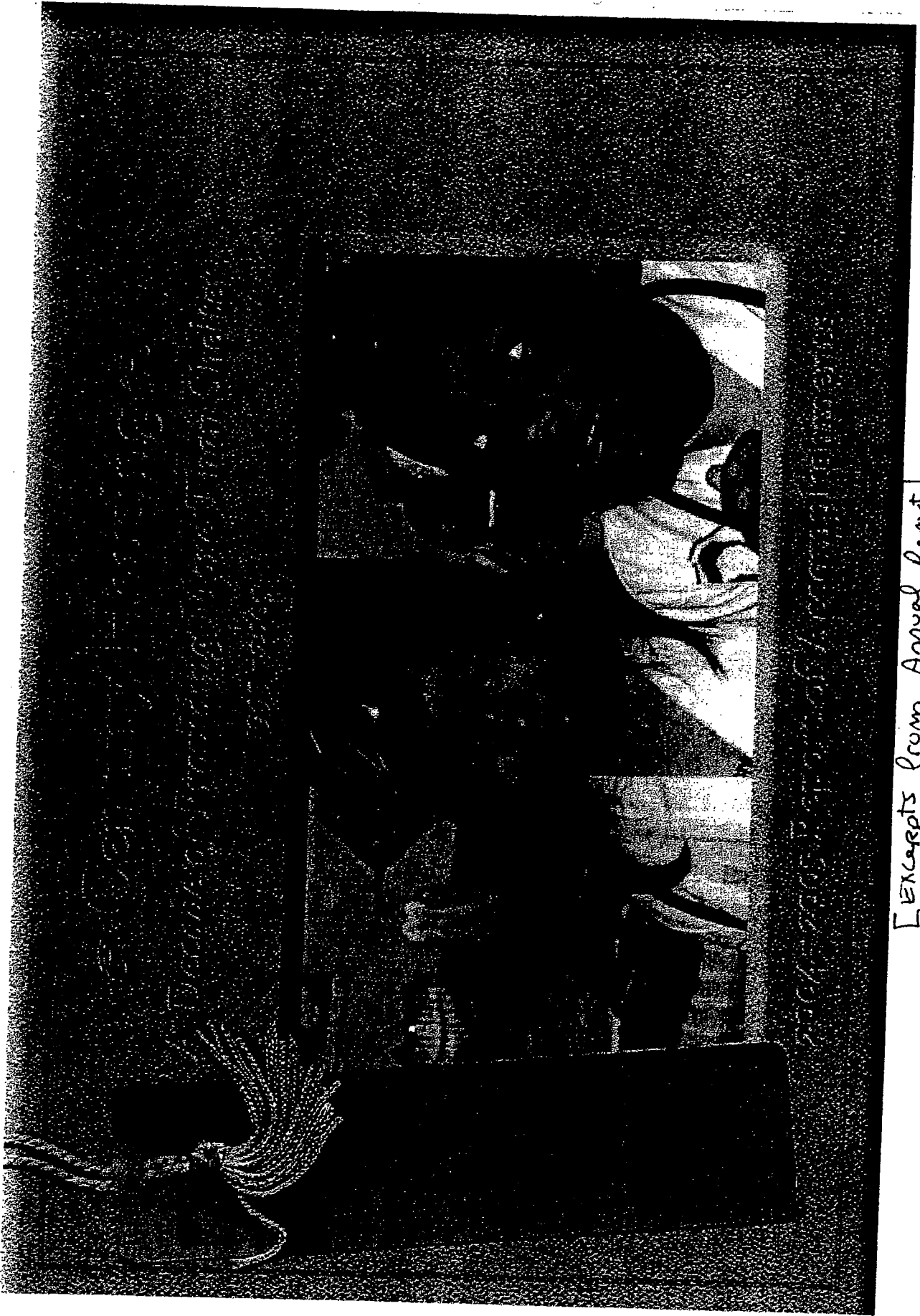
## Recent More Than Shelter innovations:

- **The Cabrillo Plaza Apartments**, the latest phase of development at the Century Villages at Cabrillo, featuring rental units for 200 formerly homeless veterans transitioning back into society by paying rent according to their income.
- **The Burbank Senior Artists Colony**, an affordable 141-unit senior apartment complex in Burbank, includes a 45-seat theater and screening room, two fine arts studios used for art classes and as free studio space for resident artists, gallery space that displays resident art, a media arts complex with a digital video editing bay, and a computer center. Also onsite is the **More Than Shelter For Seniors® (MTSFS)** program, offering classes ranging from health and fitness to computers. An onsite library will soon offer an intergenerational read aloud program with a Burbank Unified School District kindergarten next door to the Senior Artists Colony.
- **Three Century/Learning Initiatives For Today® (Century/LIFT®) Teen Centers**, located in affordable apartment complexes, designed specifically for teens seeking homework assistance, college and financial aid application guidance, and a safe place to spend after-school time.
- **The Century Community Training Program (CCTP)**, which has graduated more than 1600 community residents in 15 cities to prepare them for construction trade apprenticeships. More than 1,300 have been placed in building trade jobs, increasing their earning potential—17% of them women.

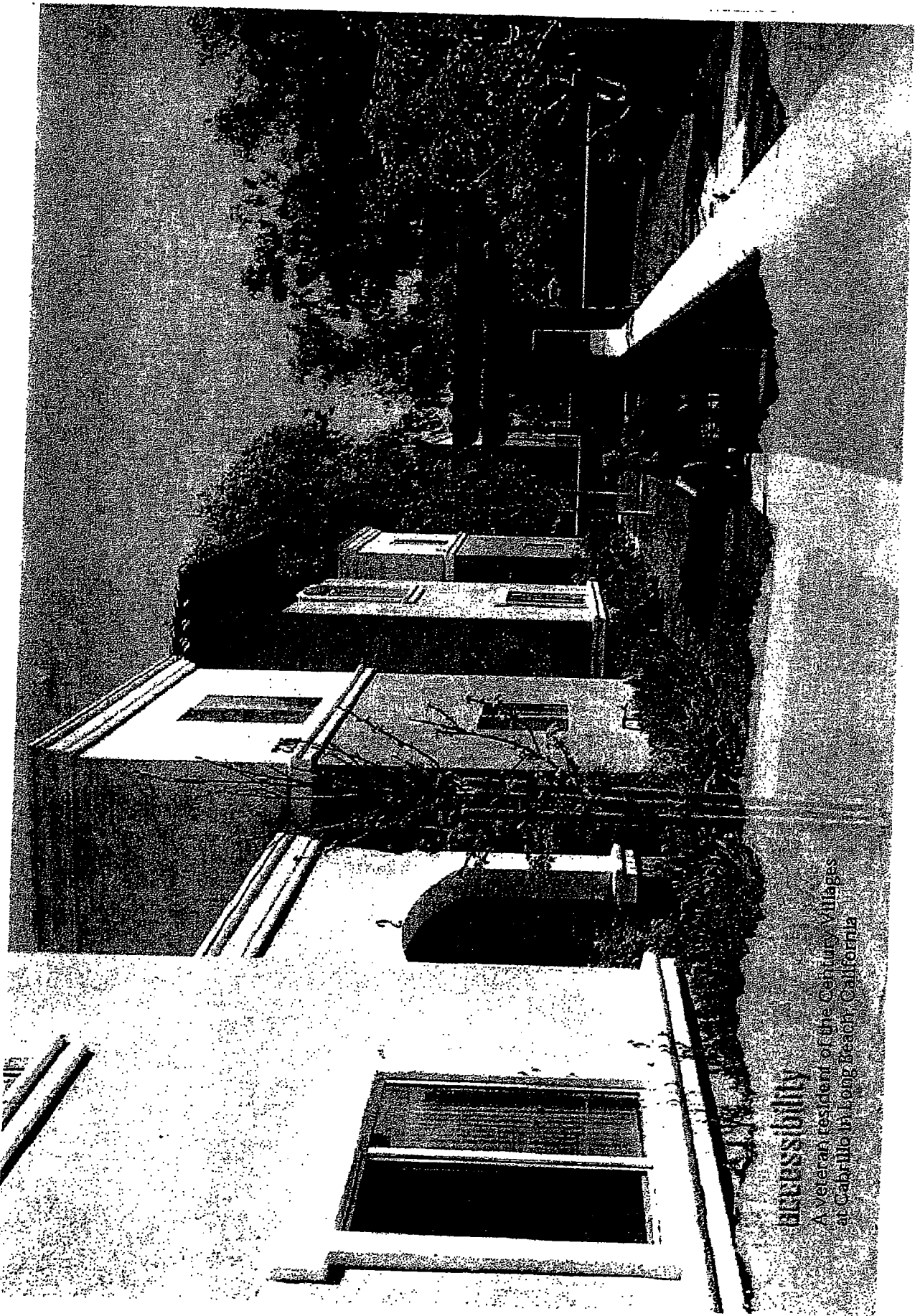
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Homeownership Counseling | Homeowner Support | Tenant & Landlord Support  
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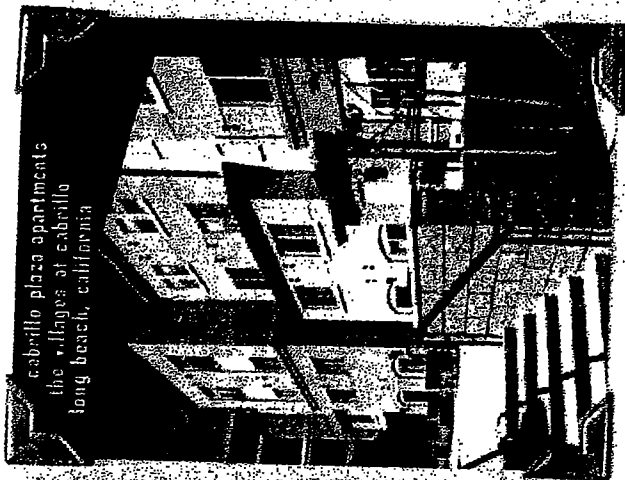
[Excerpts from Annual Report]



## Accessibility

A Veteran resident of the Century Villages  
at Caballo in Long Beach, California

# housing and services for the homeless



cabrillo plaza apartments  
the villages at cabrillo  
long beach, california

On any given night, more than 88,000 homeless people—nearly 20% of them veterans—sleep on the streets in Los Angeles County. To address this crisis, Century provided more than \$8 million in financing for the 1996 conversion of a Northrop University dormitory into Westside Residence Hall in Inglewood. The 515-bed transitional housing facility is run by U.S. VETS (formerly L.A. VETS), the nation's largest services provider dedicated to helping homeless veterans.

Century and U.S. VETS expanded their shared vision in 1999 with the Villages at Cabrillo, a 26-acre transitional housing facility located on a former U.S. Naval housing site in Long Beach. Serving more than 4,000 formerly homeless men, women, and children annually, it is the largest facility of its kind in the country.

Phase I of the Villages at Cabrillo held its grand opening in 1999, offering transitional housing and social services managed by U.S. VETS and other service providers, including the Salvation Army, the California Employment Development Department, and Catholic Charities. In August of 2004, Phase II of the Villages at Cabrillo was completed. Cabrillo Plaza Apartments features 200 sober-living rental units for veterans who have found employment and are able to pay rent based on their income levels. Tax credit funding of \$20.6 million for Phases I and II was provided by John Hancock Realty Advisors through the John Hancock Tax Credit Fund V, LLC, and Century has provided more than \$39 million in financing for Villages at Cabrillo.

Phase III, to be called The Family Commons at Cabrillo, will feature larger units of up to four bedrooms for families in need who have found steady work and are more established in their transition from homelessness. With the City of Long Beach as a partner, Century will finance an additional \$25 million for Phase III, providing housing for 80 families.

Other innovative Century-financed transitional housing developments include SRO Housing's Rivers Hotel featured on page 17, and the P.A.T.H. (People Assisting The Homeless) Regional Homeless Center located in Hollywood. Completed in 2002, the P.A.T.H. Regional Homeless Center features a one-stop "mall" of social services including an employment agency, personal grooming salon, substance abuse counseling center, mental health care, medical clinic, and a community court.



p.a.t.h. regional  
homeless center  
hollywood, california

— the past decade —





**A complete makeover**  
The Rivers Hotel, in the Central City East  
neighborhood of Los Angeles

PHOTOGRAPH BY [illegible] FOR [illegible] MAGAZINE



## rivers hotel

Rivers Hotel, which received a \$400,000 acquisition loan from Century Housing, opened in 2003 in the Central City East area of Los Angeles at 7th Street and Central Avenue, more commonly known as "Skid Row." Each of the 76 efficiency units includes a kitchenette and private bathroom, with 35 of the units set aside for a special needs population. The building features a spacious lobby and beautiful patio grounds, and 10 artist live/work spaces at affordable rents on the first floor. Rivers Hotel was developed by SRO Housing Corporation, a leading Los Angeles provider of service-enriched housing for the homeless and others at the lowest income levels. SRO Housing's tenants have access to job search assistance, recovery programs, case management, mental health services, health screenings, and more.

Luanne, a longtime resident of Downtown Los Angeles, lives in one of the artist spaces at the Rivers Hotel, surrounded by her art. Also a longtime member of the downtown arts community, Luanne serves as an advocate for the homeless by organizing creative activities in parks and on the streets. She continues to produce her artwork despite debilitating health problems and chronic pain. Describing herself as "compulsively creative," she writes music, and creates art in a broad range of media, including silkscreen, linoleum block print, acrylic paint, and collage.

A trained musician with years of study on piano, trumpet, and guitar, Luanne now has a safe place to keep a keyboard and some recording equipment, which she uses to compose her own material.

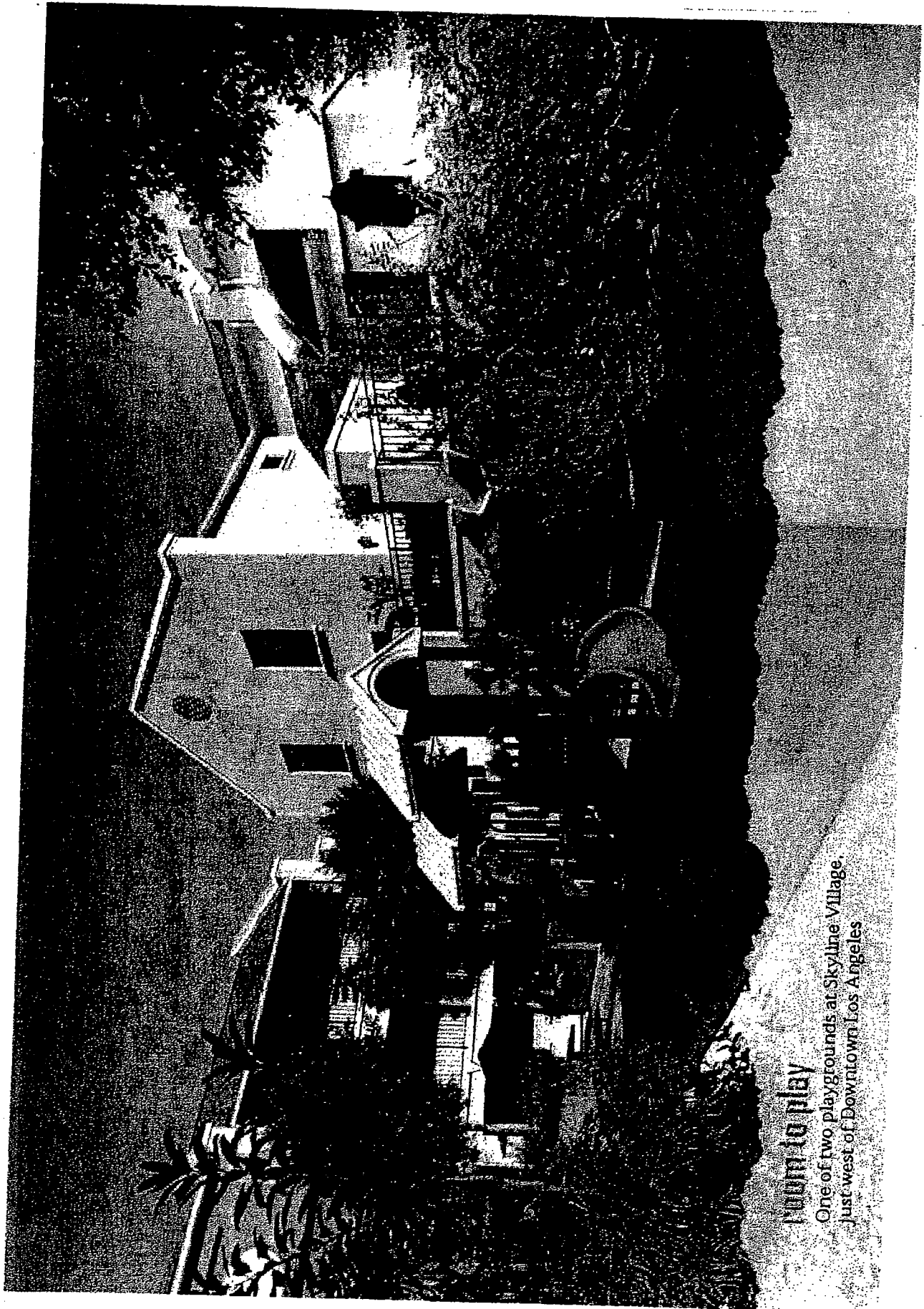
Before coming to Rivers, Luanne struggled for 14 years to create art in the only housing she could afford at the time—a small efficiency unit in another of SRO Housing's downtown hotels. "I had to work on the floor in my room, on the floor in the hall, in the patio in the back. I made scaffolding out of saw horses—it was a little wild!" she says. Now her home is a bachelor apartment attached to a spacious studio with a storefront entrance, and floor-to-ceiling gallery windows, where she can display and sell her art. "This is the first time in 20 years I've actually had a home—where I moved in and I had a bathtub that no one had ever bathed in, a kitchen that no one had ever cooked in. Just brand spanking new."



Skyline Village in Los Angeles, with funding from Century Community Development, Inc.

Skyline Village in Los Angeles, with funding from Century Community Development, Inc.

*[Faint handwritten notes or bleed-through from another page]*



## Room to play

One of two playgrounds at Skyline Village, just west of Downtown Los Angeles

## skyline village

Located just west of Downtown Los Angeles, Skyline Village celebrated its grand opening in August 2005. The 73-unit affordable apartment complex sits on a park-like, landscaped campus with two playgrounds, a picnic area with a gourmet barbecue, a basketball court, and apartment balconies overlooking it all. The campus also features luxury amenities such as a community room with a flat screen television and surround sound, a computer lab with free Internet access, a fitness center, and gated underground parking.

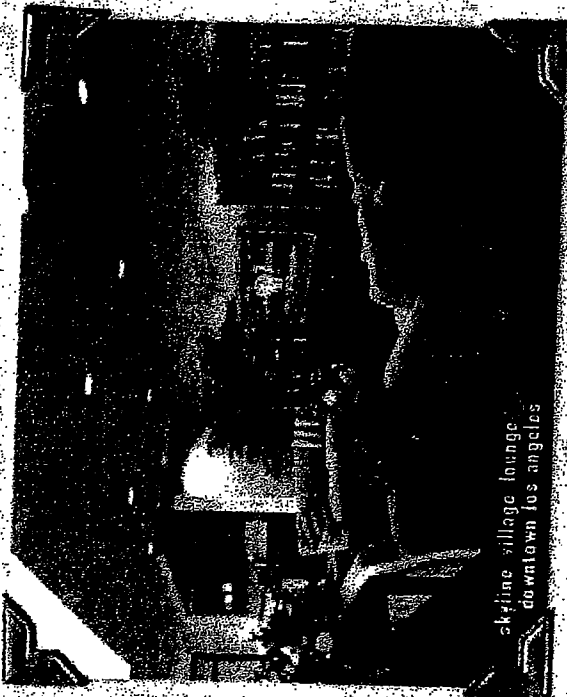
The Los Angeles Housing Department estimates that the city is more than 60,000 units short of apartments for working families who need larger units. With 37 three- and four-bedroom units, Skyline Village fulfills a great need. Financed in part with a \$1.4 million site acquisition loan from Century Housing and a \$550,000 bridge loan from Century Community Development, Inc., Skyline Village was developed and is managed by Thomas Safran & Associates.

Luz, her husband Salvador, and their four children—ages 11 through 16—had been living in a cramped two-bedroom apartment for years. Her youngest daughter requires her full-time attention; the 13-year-old is on a feeding tube as a result of gastroesophageal reflux disease and suffers from mild cerebral palsy and asthma. After being on a Section 8 waiting list for three years and searching in vain for a decent apartment for two years, Luz was called one day last year to her daughter's school because the young girl was running a fever. On her way, Luz saw a line of people in front of the soon-to-be opened Skyline Village. She quickly parked, jumped out of her car, and got an application. The \$45 parking ticket she discovered upon returning to her car was a small price to pay for their beautiful new four-bedroom home. "We could not afford to pay \$45, but it was worth it. I'm so glad to live in this place."

— the reporting years: July '03 to June '05 —

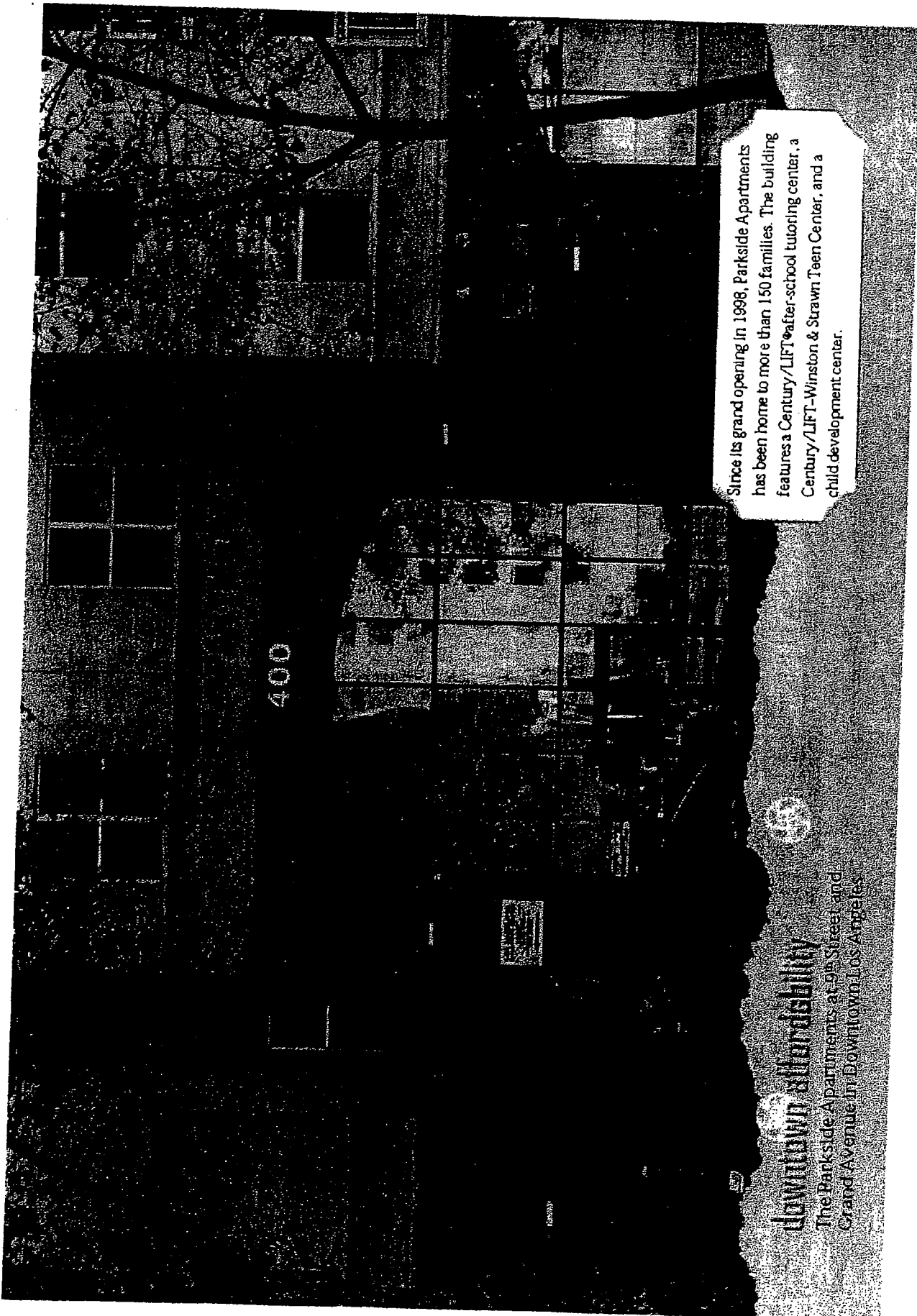


Los and family



skyline village lounge  
downtown los angeles

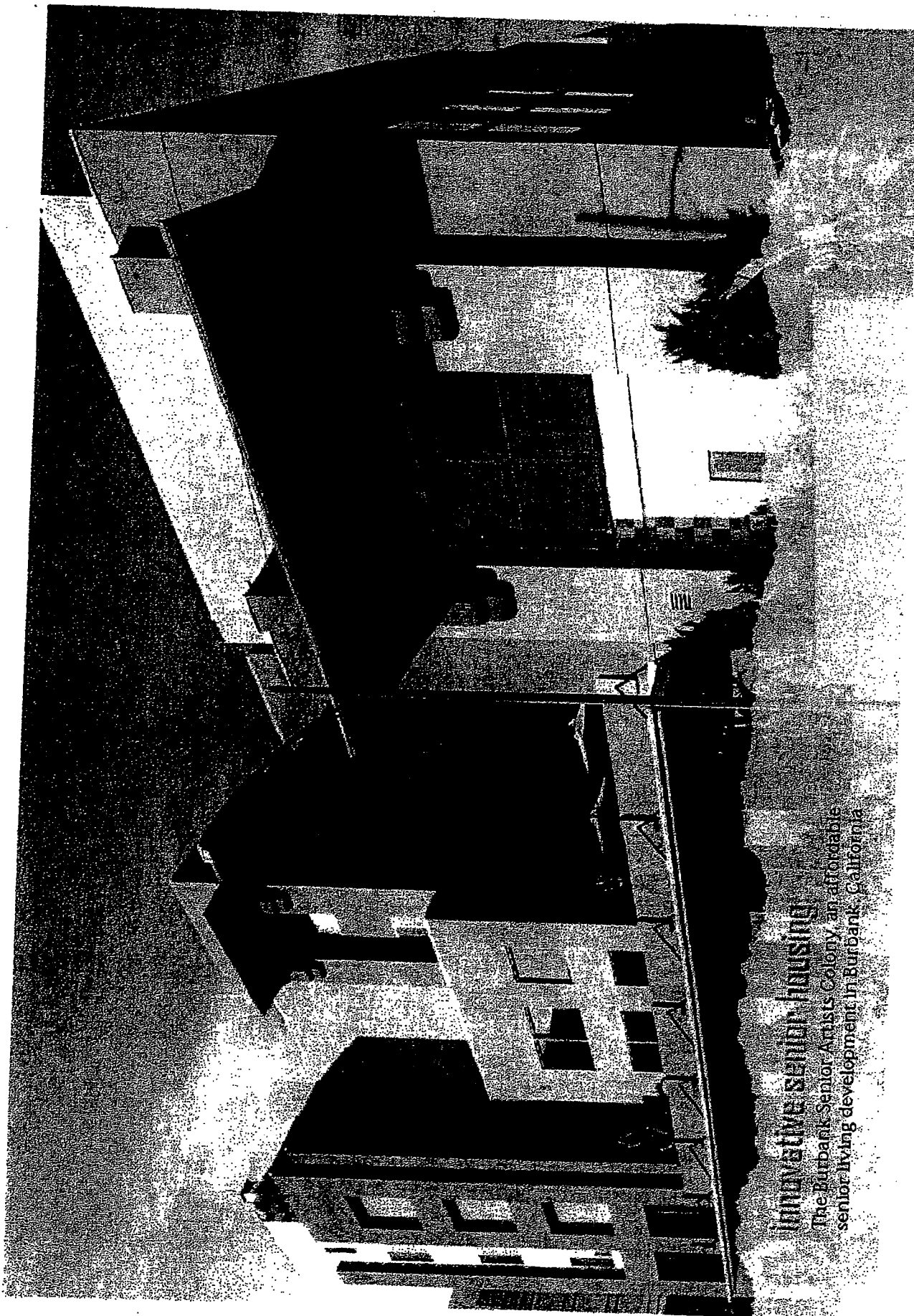




Since its grand opening in 1998, Parkside Apartments has been home to more than 150 families. The building features a Century/LIFT after-school tutoring center, a Century/LIFT-Winston & Strawn Teen Center, and a child development center.

# downtown affordability

The Parkside Apartments at 9th Street and Grand Avenue in Downtown Los Angeles



**Innovative Senior Housing**  
The Burbank Senior Artists Colony, an affordable senior living development in Burbank, California

# burbank senior artists colony

Developed by Meta Housing, and financed in part with a \$1 million bridge loan from Century Housing, the Burbank Senior Artists Colony is one of Southern California's most innovative senior housing communities. Opened in April 2005, the 141-unit apartment complex provides More Than Shelter For Seniors amenities for retired artists (and those who have always wanted to be artists). Features include a 45-seat theater and screening room, two fine arts studios, gallery space that displays resident art, a media arts complex with a digital video editing bay, and a computer center.

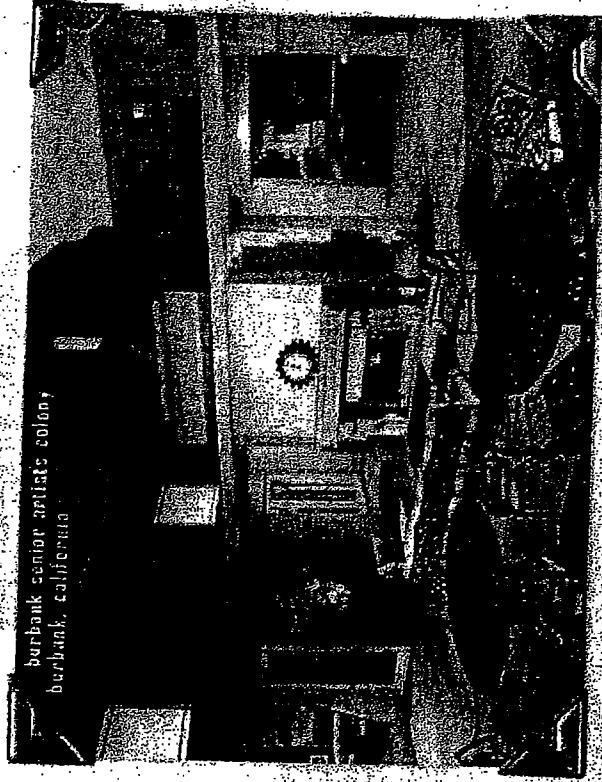
All units, both one- and two-bedroom, feature a patio with exterior views. Thirty percent of the units are reserved for low-income seniors. Other amenities include community outdoor patio areas with mountain views, a swimming pool, fitness center, and a clubroom with a wide screen plasma TV and a baby grand piano.



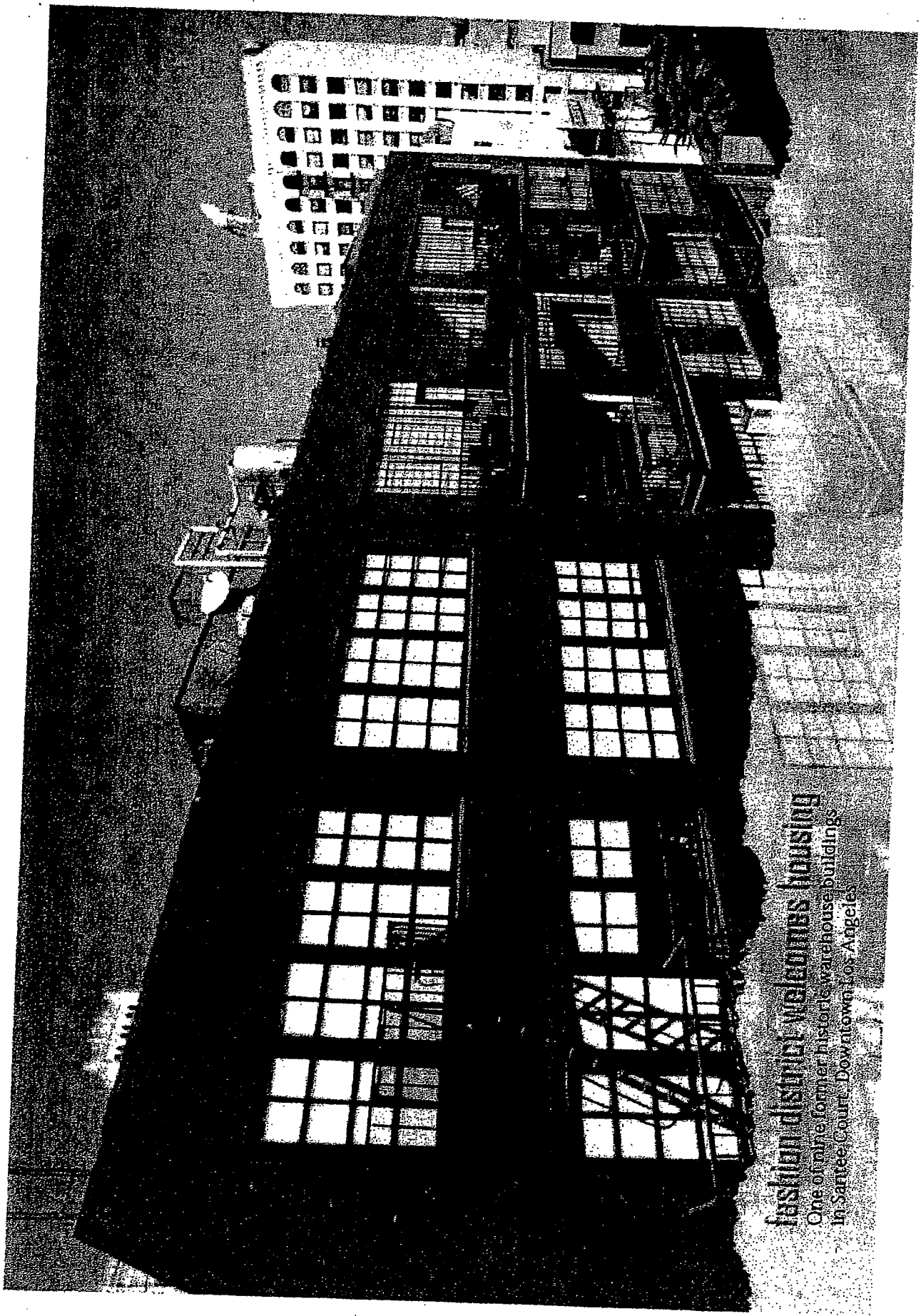
Suzanne, originally from Boston, Massachusetts, has found a new talent in her later years—writing screenplays.

With encouragement from writing classes offered in the More Than Shelter For Seniors program at the Burbank Senior Artists Colony where she lives, Suzanne has written a short film that will be produced at the Artists Colony facility with other residents. She credits the program with helping her discover her hidden talents.

"I never wrote dialogue in my life before—and now I am about to learn film editing. Without this program I never would have known that I had these talents," she says.

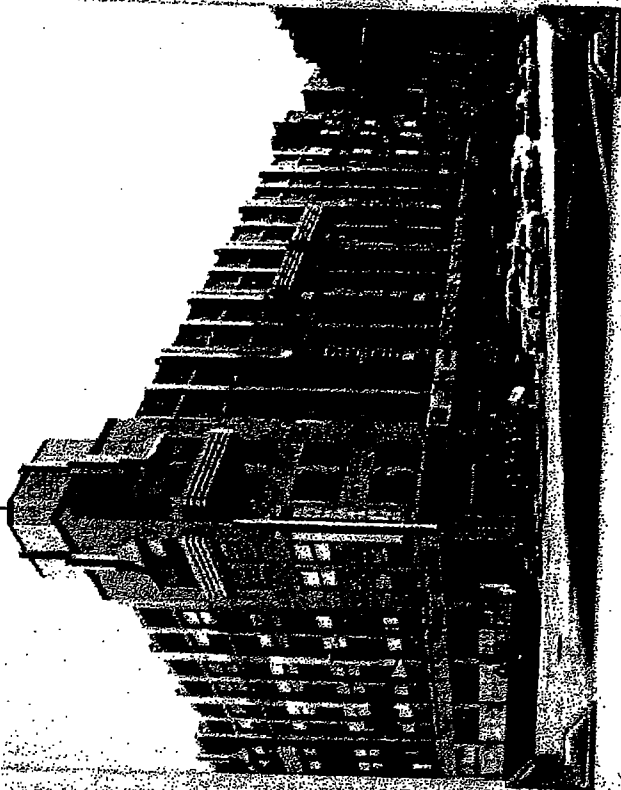






**fashion district welcomes housing**  
One of nine former historic warehouse buildings  
in Santee Court, Downtown Los Angeles

santee court  
los angeles, california



## santee court

One of the largest adaptive reuse developments in Los Angeles, Santee Court is an innovative conversion of nine Fashion District warehouses designated as local historic monuments. As a cornerstone of Downtown Los Angeles' burgeoning residential community, the complex includes beautiful outdoor patios and courtyards and an extensive use of rooftop space, including a swimming pool, hot tub, basketball court, barbecue area, putting green, and mini driving range.

Phase I, for which Century provided a \$3 million guaranty loan, included the creation of 165 workforce loft apartments, 35 of which are restricted to very low-income earners. Designed to meet the needs of downtown workers, the mixed-use development also features 44,000 square feet of retail and commercial space. MJW Investments, which purchased the buildings in 1998, developed the property.



Alonzo, an actor and security guard for "red carpet" events, had been living in Rancho Cucamonga with his wife and two young sons. When his marriage ended, he was awarded the apartment the family had been living in, but he chose to allow his ex-wife and sons to remain there because it was less disruptive for his children. Looking for his own place, however, was more difficult than he expected; he ended up staying with a friend for more than a year. Finally, he applied for and was selected to live in an affordable apartment at Santee Court, where he now enjoys downtown living, and plans to graduate from California State University, Los Angeles. Encouraged by the supportive management, Alonzo says the Santee Court staff is "like a second family to me."

— the reporting years: July '03 to June '05 —

## other recent loans

### site acquisition loans

**Abbey Apartments, Downtown Los Angeles**  
Funding was provided in participation with Low Income Investment Fund for a 115-unit permanent single room occupancy development for formerly homeless individuals. **\$1,575,000**

**Emerald Terrace Family Apartments, Central City West**  
Funding was provided to Meta Housing for the development of an 84-unit affordable multifamily apartment community. **\$735,000**

**Harvard Heights Apartments, Koreatown**  
Funding was provided to Harvard Heights Partners for the acquisition of a site that will be developed into 44 units for very low-income families. **\$935,000**

**Menorah Housing Foundation Senior Housing, Northridge**  
Funding was provided to Menorah Housing for the development of 80 affordable units of senior housing for very low-income individuals. **\$1,375,000**

**W.F. Fuller Building, Lincoln Heights**  
Funding was provided to Livable Places, Inc. for the adaptive reuse of an historical industrial building to create 102 workforce and low-income for-sale condominium units. **\$1,467,000**

**Seasons at Compton, Compton**  
Funding was provided, in participation with Housing Partnership Network, to LINC Housing for the development of 118 units of very low-income senior housing. **\$3,258,400**

**Avalon II Apartments, Willowbrook**  
A multipurpose acquisition and predevelopment loan was provided to Avalon Housing Partners, L.P. for the development of a 65-unit development for low-income seniors and single mothers. **\$1,200,000**

**Wilshire Court Apartments, Downtown Los Angeles**  
Funding was provided in participation with Low Income Investment Fund and Genesis for the acquisition of a site that will be developed into 201 units of family housing, of which 41 units will be affordable to very low-income families. **\$4,500,000**

**West Angeles Townhomes, Crenshaw District**  
Funding was provided for the acquisition of a site that will be developed into 52 workforce and low-income condominiums. **\$2,043,000**

### predevelopment loans

**Casitas De Oro, Antelope Valley**  
Funding was provided to L.A. Family Housing for the creation of 204 apartment homes, of which 80% will be affordable to low- and moderate-income families. **\$300,000**

**52nd Street Senior Housing, Los Angeles**  
Funding was provided to WHAR Housing Corporation to assist in the creation of 15 units of low-income senior housing. **\$38,400**

### bridge loans

**Northwest Gateway Apartments, Central City West**  
Funding was provided to Meta Housing for a 278-unit multifamily development, of which 57 units will be affordable to very low-income families. **\$3,200,000**

**Cecil Younger Gardens, Van Nuys**  
Funding was provided to L.A. Family Housing for a 30-unit affordable development. **\$250,000**

### construction loans

**8843 Agnes, North Hollywood**  
Construction and permanent loan funding from Century subsidiary, The Century Community Lending Company, helped finance a five-unit workforce housing development. **\$675,000**

**Pascual Reyes Townhomes, Downtown Los Angeles**  
Funding was provided to Pico Union Housing Corporation for the construction of a 13-unit large family development for very low-income households. **\$2,632,000**

**12040 Dehogue, North Hollywood**  
Funding was provided from Century subsidiary, The Century Community Lending Company, to refinance construction debt with a permanent loan for a five-unit workforce family development. **\$615,000**

### other funding

**Distressed Single-Family Homes, Southeast Los Angeles**  
A two-tier revolving line of credit was provided to Gateway Cities Partnership, Inc. for acquisition and rehabilitation expenses associated with the purchase of distressed single-family homes in southeast Los Angeles. **\$4,000,000**

**Woodbridge Manor Apartments, Irvine**  
Funding was provided to Irvine Housing Opportunities to rehabilitate a 150-unit, affordable senior development and to construct an on-site senior assisted living facility. **\$250,000**

**L.A. Family Housing, Los Angeles**  
A two-tier line of credit was provided to L.A. Family Housing for predevelopment and operating expenses, and future development opportunities. **\$500,000**

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### MEMORANDUM

May 25, 2006

To: Richard S. Volpert  
From: Cindy Starrett  
Estela de Llanos

File no:

Copies to: Mark Kelly

Subject: Policy Considerations for County Mello Act Compliance Alternatives

### I. INTRODUCTION

We understand that concerns have been raised in the context of several proposed Marina del Rey projects about the County existing Mello Act policy, and that the County has convened a staff Task Force to review Mello Act issues. We further understand that the Task Force is scheduled to report back to the Board of Supervisors soon with recommendations regarding the County's existing policy, which was adopted in 2002. As you know, we were recently retained by Lyon Villa Venetia – which is currently working with the County on a proposed project – to review these issues. We hope that input from stakeholders, including housing developers, affordable housing advocates, and non-profit housing developers, will be considered by the Task Force before any recommendations are completed. We attended yesterday's excellent presentation on this issue at the Regional Planning Commission, and appreciate the Commissioners' identification of many complex issues in this arena.

Our recent experience with the application of the Mello Act, including in the Venice area of the City of Los Angeles, confirms the need for flexibility in its application. The Mello Act is intended to provide local jurisdictions with discretion in imposing affordable housing requirements in the Coastal Zone, because each situation presents some unique facts and public policy considerations. We do not believe the County is legally required to reexamine the existing rules, upon which developers of proposed projects have reasonably relied. Given that the Task Force is proceeding, however, this memo summarizes several public policy goals which we hope that the Task Force will consider in its deliberations. We also request an opportunity to meet with the Task Force to discuss these issues in detail. We appreciate your invitation to present this brief summary in connection with that request.

## II. POLICY ISSUES AND CONSIDERATIONS

A central premise of the Mello Act is that affordable housing can be required only if “feasible”, a statutorily-defined term that requires decision-makers to consider whether a project can be *successfully* completed within a *reasonable period of time*, taking into account *economic, environmental, social and technical* factors. Some of these factors which the County should consider in reviewing its existing policy are as follows:

- *The County of Los Angeles is Uniquely Situated as Landowner.* In other Mello Act contexts the economic impact of any required subsidies or contributions impacts primarily the landowner and/or developer, by requiring reductions in land costs and reducing the return on the projects. However, the County’s experience as landowner for many years has been that rents from the Marina have served as a substantial source of the County’s unrestricted funding. These monies contribute to the County’s overall budget, which is used to fund important County-wide programs, including health care and other social services that benefit low and moderate-income individuals and families throughout the County. For example, for the current fiscal year, over 50% of Marina del Rey ground rent proceeds will be transferred from the County of Los Angeles General Fund to the County Department of Health Services. To the extent that feasibility constraints require reductions in ground rents so that affordable housing can be provided within Marina del Rey, funding for these services and other County purposes will also be reduced.
- *The Most Expensive Solution, with the Highest Subsidy Per Unit, Is Not Necessarily the Best or Only Outcome Under the Mello Act.* Experts concur that the cost of producing housing, as well as market prices, are extraordinarily high at this time, particularly in high-end luxury projects such as those proposed for the Marina. If each individual project has a maximum amount of subsidy it can afford to provide to affordable housing before the project becomes infeasible – even if that subsidy amount can be increased by reducing the County’s ground rent and long-term income from the project – the Mello Act clearly permits the County to consider whether it is always preferable to expend those dollars on-site at very large subsidy per unit costs, or whether other alternatives should be available.
- *The Supply Of Affordable Housing Units Should Be Expanded, and the Cost Per Unit Must Be Considered.* The County’s review of Mello Act compliance must be guided by a clear statement of its public policy goals. We believe that appropriate goals are to maximize the production of affordable housing within the Coastal Zone and three miles thereof – as provided by the statute – without reducing the County’s ability to generate funding for County-wide public benefit programs. The County may also consider policies that improve housing opportunities for moderate income households, which may include teachers, police officers, health professionals and other public employees.
- *Off-Site Compliance Both Within and Near the Marina, As Well As In-Lieu Fees, Are Essential Options, Particularly in Cooperation with the County and Non-Profit Housing Developers.* Some affordable housing advocates are appropriately

concerned about the ability to achieve production of off-site housing units and the ability to utilize in-lieu fees for housing production. We believe the County can assist with initiatives to facilitate identification of land for off-site affordable units, both within the Marina and nearby, as well as expediting entitlements for such projects. Indeed, some non-profit housing developers may be able to utilize the additional funding and assistance which Mello-based contributions can provide for affordable housing projects which are otherwise viable but need additional funding. Guidance by the Task Force to assist in land identification (both vacant or under-utilized parcels as well as sites that can be reused to allow for highest and best use), entitlement expediting and cooperation with non-profit housing developers could greatly increase the pace and number of affordable units that could be produced.

- *The Coastal Act and Complications with Density Bonuses are Legitimate Considerations in Determining Feasibility for Mello Act Compliance.* Housing developments within the Coastal Zone are subject to a number of restrictions and requirements that must be considered when analyzing the feasibility of on-site affordable housing. In some situations, density bonuses may be legally obtainable but practically of limited economic benefit, for example if they mandate subterranean parking (difficult in high water table areas like the Marina) or more expensive construction types. Existing LCP provisions for housing can be difficult to change. The California Environmental Quality Act, the Coastal Act, state and local general plan requirements and other regulations all place legal, political and practical burdens on projects which must be considered under the Act's definition of infeasibility.
- *All Stakeholders, Including Financing Sources and Housing Developers, Need Certainty as to the Cost of Mello Act Compliance.* The existing policy has the very positive consequence of creating certainty for the development community as to what requirements will apply to future projects. Without such certainty, projects may fail with prolonged predevelopment expenses and difficulty in securing the necessary financial backing to build more housing. By defining feasibility in terms of whether a project can be completed in a "successful" manner within a "reasonable" period of time, the Mello Act acknowledges the need for certainty and predictability. Without a clear policy, housing production will be stifled. Certainty and predictability can be achieved by retaining an in lieu fee provision or establishing a running inventory of acceptable alternative sites and projects.
- *The County Must Clearly Define Feasibility Criteria.* Prolonged debate over a specific project's feasibility can cause developers and housing advocates alike to spend inordinate resources on lengthy reports, dueling experts and litigation, while the housing crisis continues to deepen. The County has discretion to limit debate by adopting a uniform methodology for making feasibility determinations based upon objective parameters and establishing a clear process for staff review.

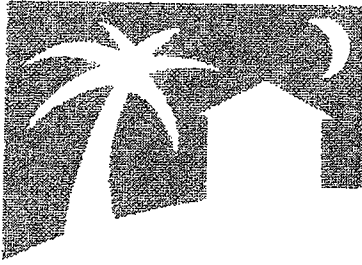
### III. CONCLUSION

The County's existing policy correctly reflects its discretion under the Mello Act, which does not establish a "one size fits all" mechanism for providing affordable housing within

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the Coastal Zone. Rather, jurisdictions are permitted to adopt policies and ordinances that are specifically tailored to address local needs. As Marina landowner and lessor, the County can appropriately balance its need to maximize revenues for County programs with providing affordable housing within the Coastal Zone and permit flexibility in its compliance programs to maximize the supply of affordable housing without limiting the new market rate supply.

We look forward to discussing these issues further with you.



## Venice Community Housing Corporation

720 Rose Avenue, Venice, California 90291-2710

Tel: (310) 399-4100 Fax: (310) 399-1130

Web: [www.VCHCorp.org](http://www.VCHCorp.org)

August 30, 2006

Supervisor Gloria Molina  
Supervisor Yvonne Burke  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe  
Supervisor Michael Antonovich  
856 Kenneth Hahn Hall of Administration  
500 W. Temple Street  
Los Angeles, CA 90012

Re: Proposed Marina Del Rey Affordable Housing Policy

Dear Honorable Supervisors:

This letter is written on behalf of the Venice Community Housing Corporation to urge that the Board of Supervisors reject the proposed Marina Del Rey Affordable Housing Policy ("Policy") presented to the Board of Supervisors on or about June 22, 2006 and direct the Chief Administrative Officer to substantially revise the policy so as to promote rather than frustrate the production of affordable housing within the Marina.

The Venice Community Housing Corporation (VCHC) is a community based, nonprofit housing and community development corporation dedicated to the creation and preservation of housing affordable to low income people in Venice and surrounding neighborhoods. Since its formation in 1988 we have constructed, acquired, rehabilitated, and own and operate 161 units of affordable housing in Venice and Mar Vista. 75% of our residents have incomes less than 50% of the median. Since 1995 we have developed other programs and assets that address critical needs of our community including a comprehensive youth development program for "at risk" and gang affiliated local youth, after school programs for children 6-12 years old, and the first and only infant-toddler child care center in Venice that is free to low income families. VCHC also contracts with the City of Los Angeles to provide free home repairs to low income senior and disabled homeowners living on the west side through the City's Handyworker program.

As Venice residents and as nonprofit, affordable housing developers, we at VCHC are distressed that the proposed Policy does not reflect the intent of the Mello Act and other state and local laws which clearly establish the importance of the preservation and creation of affordable housing in the Coastal Zone and throughout the County.



At the most basic level, the question must be asked. What is the Policy trying to accomplish? If it is to interpret the Mello Act in a way that will minimize the obligation to provide affordable housing within the Marina and maximize the profit that developers will reap from leasing and developing this public land, the Policy succeeds admirably. If, however, the County is trying to advance public policy that recognizes that "there exists within the urban and rural areas of the state a serious shortage of decent, safe, and sanitary housing which persons and families of low or moderate income can afford, and consequently a pressing and urgent need for the preservation and expansion of the low- and moderate-income housing supply", the proposed Policy is wholly inadequate.

The following comments focus on only the major weaknesses of the proposed Policy, including in some instances, direct disobedience to the requirements of the Mello Act.

Concerning the replacement of affordable units demolished within the coastal zone, the proposed Policy seeks to exempt from replacement all of the following;

1. Units occupied by resident managers, regardless of whether the manager is, as is often the case, also a tenant ;
2. Units occupied by students regardless of their economic status if their parents have higher than moderate incomes and claim them as dependents on their income tax return or act as guarantors on their lease agreements;
3. All units vacant at the time "term sheet" negotiations between the developer and the County commence;

There is nothing in the Mello Act that authorizes these exemptions. There is no public policy that is furthered by allowing these units not to be included in the analysis.

Notwithstanding the intention of the Mello Act to preserve existing affordable housing within the Coastal Zone and the intention of state density bonus law to increase the supply of affordable housing by permitting additional market rate units to developers who will include affordable units within their developments, the proposed Policy permits the developer to satisfy both requirements with the same affordable units. In other words, "double dipping" to maximize the developers profit and minimize the number of affordable units required. Clearly such a result frustrates the public policies underlying both state laws. In fact, the Mello Act expressly provides that the law "is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government as may otherwise be provided by law, to require or provide low – or moderate-income housing within the coastal zone which is in addition to the requirements of this section."

The proposed Policy provides that replacement units are required to remain affordable for only 30 years. There is nothing in the Mello Act that authorizes such a limitation and there is no public policy that is furthered by limiting affordability for only 30 years. On the contrary, the affordable housing crisis and the inability of the market to provide affordable housing demands that replacement units be affordable in perpetuity or at least as long as the land lease agreements between the developers and the County are in effect.

Finally, the proposed Policy would allow the replacement requirement to be satisfied not only by construction of new replacement units, but also by "substantial rehabilitation of existing units. In other words and in effect, the Policy would allow for the actual diminution of the supply of affordable housing if it would advantage the developer. Nothing in the Mello Act can be construed to authorize such an outcome, one that would again be contrary to the unambiguous intent of the Mello Act and other state and local law.

The proposed Policy is equally flawed in its provisions regarding the inclusion of affordable units in new construction projects in the Marina.

The proposed Policy does not require that any affordable units be included no matter how big the new housing development or how many units are included. It only sets as a "goal" the inclusion of 5% very low or 10% low income units. In order to determine the actual number, if any, the proposed Policy provides for a feasibility analysis on a "case by case" basis based on information provided by the developer! This is the same kind of "policy" that resulted in the inclusion of no affordable units in any new construction project in the Coastal Zone of the City of Los Angeles for years. The reason is obvious. A developer's financial feasibility analysis rests on assumptions he makes and those assumptions can be manipulated to his benefit. Those assumptions may be buried in the proforma. They may not be reasonable and may not even be disclosed. The developer's numbers in every instance will demonstrate that it will not be feasible to include any affordable units in the pending project. And it will be virtually impossible for an administrative body to prove otherwise. After all, what is a fair return on investment? Who can say with certainty what construction costs will be next year or the year after, or the market value of condominiums years into the future?

Recognizing the inherent problem with a "case by case" analysis based on information provided by developers, the City of Los Angeles finally did its own assessment and made a categorical determination that for all new construction projects of 10 units or more it is feasible for the developers to make 20% of the units affordable to low income people or 10% of the units affordable to very low income people. And that provision of the Los Angeles City policy is a requirement not a "goal". The County should do no less.

As with the Policy for replacement units, the Policy for inclusionary units provides that the "goal" may be satisfied by rehabilitating existing units rather than creating new units, allows for double counting of the same affordable units to satisfy both Mello and Density Bonus law, and limits the affordability restriction to 30 years. And for the same reasons, the Policy as proposed is fatally flawed.

Finally, in determining the size of the new development for purposes of calculating the percentage of affordable units to be included, the Policy directs that wherever an existing housing development is demolished to make way for the new construction, the number of units to be demolished is subtracted from the number to be built. So, for example, if a 20 unit building is demolished to build a new 20 unit building, none of the units need be affordable. There is nothing in the Mello Act that would justify or permit such an outcome. It is, like so many other provisions of the proposed Policy, designed circumvent the clear intention of the law and to minimize the developer's obligation to provide desperately needed affordable housing on the Westside of Los Angeles.

Venice Community Housing Corporation urges that the Board of Supervisors determine that the Policy as proposed is unacceptable and direct that the Chief Administrative Officer revise the Policy to further the important goal of expanding the amount of affordable housing in the Marina by making the following revisions:

Regarding replacement units:

1. eliminate the exemption for managers' units unless the unit is provided solely as an incident of employment;
2. eliminate the exemption for units occupied by students;

3. eliminate the exemption for vacant units;
4. eliminate the double dipping provision that permits a developer to count required affordable replacement units as affordable units for purposes of density bonus calculation;
5. require replacement units to be affordable in perpetuity;
6. require new units when replacement units are required and forbid developers from satisfying their obligation by refurbishing existing units.

Regarding inclusionary affordable units in new construction:

1. make a categorical finding that it is feasible to include affordable units in all new construction projects of 10 units or more;
2. require (not set as a "goal") that 20% of the units be affordable to low income people or 10% of the units be affordable to very low income people;
3. eliminate the double counting provision re Mello and Density Bonus law;
4. require that the units be affordable in perpetuity;
5. require new units and not the refurbishment of existing units
6. do not permit units to be demolished to be subtracted from units to be constructed in determining the number of affordable units to be included in the new development.

Thank you for your consideration of these comments. We look forward to working with the County to craft a Policy that accurately reflects the intent of the Mello Act, furthers the underlying public policies that it was intended to address and truly responds to the housing crisis that exists in Los Angeles County today.

Very truly yours,

Steve Clare  
Executive Director

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October 25, 2006

VIA E-MAIL

Mr. Santos Kreimann  
Chief Administrative Officer  
County of Los Angeles  
Hall of Administration, Room 754  
500 W. Temple Street  
Los Angeles, California 90012

Re: Proposed Marina del Rey Affordable Housing Policy

Dear Mr. Kreimann:

As you know, we represent Legacy Partners ("Legacy"), which is seeking to develop a 526 unit apartment units, 174 boat slips and a restored wetland park and public boats slips on Marina del Rey Parcels 10R, FF and 9U. We are writing on behalf of our client to provide additional comments on the draft Marina del Rey Affordable Housing Policy ("Draft Policy") released by the County Task Force in June, 2006.

As a general matter, Legacy supports the Draft Policy and commends the Task Force for its efforts. However, in light of the unique environmental, social and economic considerations factors that make the development of affordable housing in the Marina difficult, we encourage the County to consider a more flexible approach to Mello Act compliance, as outlined in Estella de Llanos' October 20, 2006 letter to you on behalf of Lyon Capital Ventures. We are in agreement with all of the points in Ms. de Llanos' letter and believe that providing developers with additional options will result in the development of more affordable housing at lower levels of rent concessions by the County.

The City of Los Angeles has recently prepared a draft ordinance to replace its outdated Interim Administrative Procedures for Implementing the Mello Act. Among other things, this draft ordinance exempts new apartment projects from Mello Act compliance because the City found that high cost of development makes the provision of affordable units categorically infeasible. This finding is based on an expert study by Hamilton, Rabinovitz & Alschuler. The draft City ordinance allows condominium developers to provide the required affordable unit off-site or pay an in lieu fee that could be leveraged to provide more affordable units than could be achieved through an on-site inclusionary requirement. We believe that County should consider the City's approach to these issues in developing its own Mello Act policy.

ARMBRUSTER & GOLDSMITH LLP

Mr. Santos Kreimann

October 25, 2006

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We are pleased that the Draft Policy recognizes the County's unique position as land owner and calls for rent concession to enable applicants to meet Mello Act inclusionary housing requirements. However, we are seeking clarification of the statement in the Executive Summary that rent concessions shall not be available with respect to replacement housing obligations under the Act. We take this sentence to mean that the County will not provide rent concessions solely for replacement units, but that the provision of replacement units will be a factor in calculating the level of rent concessions for inclusionary unit. The Mello Act provides that the inclusionary unit only need to be provided where feasible. Obviously, the economic cost of providing the replacement units, as well as the inclusionary units, is a critical factor in determining feasibility.

Thank you for your consideration. We would be pleased to provide any additional information that you or the Task Force may require.

Very truly yours,



Dale J. Goldsmith

cc: Honorable Board of Supervisors

Julie Moore

Larry Hafetz, Esq.

Tom Faughnan

Legacy Partners

**Marina del Rey  
Lessees Association**

C/o Mr. Timothy C. Riley, Executive Director  
8537 Wakefield Avenue  
Panorama City, CA 91402  
Telephone: 818-891-0495; FAX: 818-891-1056

October 5, 2006

Mr. Santos Kreimann  
Chief Administrative Office  
754 Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Santos:

The Marina del Rey Lessees Association wants to take this opportunity to thank the members of the County Task Force on Affordable Housing for their thoughtful work on revisions to the County's Affordable Housing Policy for Marina del Rey.

We were pleased to participate in the Public Forum on this important issue. After further consideration, the Association would like to propose that the Task Force also reconsider provision of an *in lieu* fee as an option for inclusion as an alternative to the provision of replacement and inclusionary affordable units on-site or off-site by the developer.

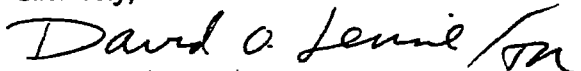
The Mello Act contains a provision for an *in lieu* fee. Existing County policy also called for the utilization of an *in lieu* fee. Many jurisdictions include payment of an *in lieu* fee in their own local affordable housing ordinances.

The *in lieu* fee approach deserves consideration because provision of such a fee would stimulate the production of a larger number of affordable units outside the Coastal Zone than would be financially possible either on-site within Marina del Rey or could be provided by the developer off-site within three miles of the Coastal Zone.

Each developer and each project is unique, and we believe that the *in lieu* fee would be an appropriate approach to the provision of affordable housing, and that payment of an *in lieu* fee is consistent with the Mello Act.

Thank you for your consideration.

Sincerely,



David O. Levine  
President, Marina del Rey Lessees Association

Cc: Members, Los Angeles County Board of Supervisors

Marina del Rey Affordable Housing Policy  
Statement by David Levine, President of the Marina Lessees Association

Good evening, Task Force members. My name is David Levine. I will be addressing you this evening as current President of the Marina del Rey Lessees' Association and as a representative of the ownership of the Del Rey Shores Apartments.

Your Task Force is to be congratulated for formulating a Draft Affordable Housing Policy for Marina del Rey which is in all ways compliant with the Mello Act, yet which provides the County of Los Angeles and its lessees in Marina del Rey a flexible framework within which diverse projects can achieve such compliance. Our recent experience with the myriad Mello Act compliance issues affecting the redevelopment of the Del Rey Shores apartments has shown us that the Mello Act is careful to give local jurisdictions wide discretion in complying with affordable housing requirements. As a result, no two jurisdictions in California comply with the Act in the same way. It is important to emphasize that the Mello Act does not prescribe only one means to comply with the Act, and that multiple unique projects can differ in many critical elements and still all be consistent with the Mello Act.

This is particularly important with regards to articulation of an affordable housing policy in Marina del Rey, which is owned by the County of Los Angeles. Marina del Rey is the largest income-producing asset owned by the people of the County of Los Angeles, all 13 million of them. While some existing Marina tenants may wish to keep their rents at relatively low levels, there are many hundreds of thousands of County residents who rely on vital County social services who will benefit from the substantial County revenue that will be generated by redevelopment of the Marina's aging apartment complexes. In fact, over 50% of the rent generated by the leaseholds in the Marina to the County is transferred to the County's Department of Health Services, so the County has a special social interest in generating increased revenue from the Marina. It is simply a fact of life that for every two dollars in rent foregone by the County to subsidize individual affordable units in the Marina, there will be over one dollar of lost revenue denied to support health services for millions of County residents from Long Beach to Lancaster, from Mar Vista to ~~Monrovia~~ ~~Glendale~~.

Moreover, the housing shortage in Los Angeles County extends above and beyond the availability of units to low-income individuals and families to all rental units available at many different levels of affordability. Therefore, the Affordable Housing Policy for Marina del Rey must provide the County of



Los Angeles and its lessees with the flexibility to stimulate the construction of market-rate units as well as the provision of affordable units. Unless investors are assured of market-rate returns, redevelopment of the Marina will not take place. Meanwhile, the Marina's aging apartment stock will continue to deteriorate, without the addition of badly-needed market-rate apartments or the contribution of affordable housing units.

It is therefore incumbent upon all parties within the County family and within the Marina del Rey community to bear in mind that development in the Marina must strike a sensitive balance between often-competing interests and values. The social good of providing affordable housing must be weighed against the social cost of subsidizing affordable housing. The disruption new construction causes must be weighed against the improved quality of life the community will enjoy from renovated and new residential and commercial developments in the neighborhood. The Board of Supervisors has the right, indeed the responsibility, to frame the affordable housing policy discussion in this larger context.

Consistent with Mello Act requirements, the Draft Policy:

- a. Provides a clearly defined process for determining, on a case-by-case basis for each project, whether it is feasible for

Marina developers to provide affordable units on-site in new residential projects;

- b. Establishes a credible tenant income survey process, based upon the precedents and practices of other jurisdictions, for determining existing “replacement units” per the Mello Act, and contains clear procedures for the identification, development and maintenance of replacement units within new projects, or off-site, if it is determined, on a case-by-case basis for each project, that on-site provision of replacement units is not feasible;
- c. Contains a straightforward, Mello Act-consistent “inclusionary” affordable housing program for new residential projects in the Marina: i.e., at least 5% of the net new incremental units must be designated to very low-income households, or at least 10% of the net new incremental units must be designated to low-income households; and,
- d. Provides Marina developers sufficient flexibility to construct the “inclusionary” affordable units off-site, within the Coastal Zone or within three miles thereof, if it is determined, based on the results of a feasibility analysis to be performed on a case-by-case basis for each project, that providing the inclusionary affordable units on-site is infeasible.

We live in a less than perfect world. Perhaps none of us will, or can, be happy with each and every provision of the Policy. But we all have a vested interest in making this policy work, in increasing the total housing stock, in providing more affordable housing, in keeping redevelopment projects viable, in realizing the redevelopment envisioned in the Coastal Commission-certified Local Coastal Program, in generating much-needed support for a range of vital County social services. We believe that the draft Affordable Housing Policy under discussion tonight achieves a balance which is consistent and compliant with the Mello Act.

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**ATTORNEY CLIENT PRIVILEGED DISCUSSION DRAFT**

**County Mello Policy**  
***September 7, 2006***

- My name is Peter Zak, speaking on behalf of the Villa Venetia project. We are working hard on this project and are very proud of our top-quality design which we presented to the DCB last week. We absolutely recognize the importance of affordable housing in this region. This isn't lip service; we take responsibility to help to find solutions and in fact several of us have worked on other market rate projects that included affordable housing. We will draw upon that commitment and experience at Villa Venetia. We support the proposed draft Policy because we believe it seeks to provide the greatest net benefit to the community, including affordable housing advocates, because it allows for flexibility and a case-by-case analysis of the facts presented by each project in determining the best way to support affordable unit production.

- We understand that some tenants who currently live here in the Marina, including in our existing units, don't want change because they hope that without redevelopment, the status quo and existing rents will continue. However the Marina's experience with redevelopment projects is that they do create income-restricted units as well as new, high-quality housing stock to replace the older existing units which date from the 60s and 70s here in the Marina. The five projects approved in recent years have led to 179 income-restricted affordable units, and the several projects which are now in the approval process -- including our Villa Venetia project -- are all planning to support affordable housing. The current draft Policy offers a fair and predictable process for determining feasibility and correctly recognizes that off-site alternatives may be appropriate depending on the facts.
- The way to create more deed-restricted affordable housing is to allow redevelopment. In fact, the only deed-restricted units that exist in the Marina today exist because of redevelopment.

Additional redevelopment will create new deed-restricted units, while providing the additional benefits of increased lease revenues to the County, new or improved public access and coastal recreational opportunities, improved infrastructure, consistent with County Marina and Coastal Commission policies.

- The County is doing the right thing by balancing competing goals and supporting redevelopment with appropriate consideration of affordable housing. We support those efforts and look forward to continuing toward our goal of maximizing the number of units we can feasibly support while still ensuring an appropriate return to the County and to justify our investment in new public infrastructure and environmental benefits for the Marina and all of its stakeholders. We think the current draft Policy will allow that positive outcome and allow the County to continue to generate leasehold revenues from the Marina to support other County social programs. We support the flexibility of the proposed Policy.
- Thank you.